122 (1)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In the matter of Isidoro Rodriguez, Esq.,

Petitioner.

On Petition For Writ of Certiorari
to the United States Court of Appeals for the
Third Circuit

PETITION FOR WRIT OF CERTIORARI

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The government filed a bar complaint with the Virginia State Bar Disciplinary Board ("VSBDB") in retaliation for Isidoro Rodriguez ("Rodriguez") litigating to enforce his substantive Federal and Virginia statutory rights as a father and attorney and for petitioning Congress and the General Assembly for an inquiry. After investigating Rodriguez for three years, the VSBDB unlawful held a hearing to issue a *void* order revoking his license to practice law in Virginia for litigating to enforce his statutory rights against the government and his former client. The Supreme Court of Virginia affirmed this *void* order on June 29, 2007. This Court refused to grant cert. In December 2006, based on VSBDB seeking to enforce the *void* order, Rodriguez demanded that the U.S. Court of Appeals for the 3rd Circuit conduct a hearing and protect him from the VSBDB criminal conspiracy to deprive him of his federal statutory rights. In violation of the Rules Enabling Act, FRAP Rule 46, and the mandated of *Marbury v. Madison* as of its duty to provide access to impartial judicial review under the *Void* Order Doctrine, the 3rd Circuit without notice or hearing automatically disbarred Rodriguez and refused to reinstate him by surreally holding-without any legal authority-that it would "regard" the *void* order as valid.

QUESTIONS PRESENTED FOR REVIEW

I. Whether the prohibition under the Rules Enabling Act, 28 U.S.C. § 2072(b), and the mandate under FRAP Rule 46 and *Selling*, *Theard*, and *Konigsberg*, require a court to give notice and conduct a Show Cause Hearing, thereby

forbidding the 3rd Circuit from using its Local Rule 7 to automatically disbar Rodriguez?

II. Whether the 5th and 14th Amendment to the U.S. Constitution and the requirement of impartial judicial review under the *Void* Order Doctrine prohibit the 3rd Circuit from denying a meaningful opportunity to be heard and from it surreally "regarding" the VSBDB's and Sup. Ct. Va. *void* orders as a valid order?

PARTY TO THE PROCEEDINGS

The caption of the case does contain the name of the only party, who is not a corporation.

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[2]"A-" references are to relevant Orders in the Appendix.

TABLE OF CITED AUTHORITIES

Cases:

CITATIONS TO OPINIONS BELOW

The Order of the United States Court of Appeals for the Third Circuit ("3rd Circuit"), and the Report and Recommendation of the 3rd Circuit's Standing Committee on Attorney Discipline, are reproduced respectively at A–1 and A-3.

The unpublished *void* order of the Sup Ct. Va., affirming *void* order of the VSBDB are reproduced respectively at A-27 and A-29.

STATEMENT OF JURISDICTION

The order of the 3rd Circuit was entered on December 10, 2008. The jurisdiction of this Court is invoked pursuant 28 U.S.C. §§1254(1) and 2072.

STATEMENT REQUIRED BY RULE 29.4

The Court is informed that this Petition has been served upon the Solicitor General of the Untied States and the Attorney General of the Commonwealth of Virginia pursuant to 28 U.S.C. § 2403(a) and (b), as a result of the violation of the right to substantive and procedural due process rights under the 5th and 14th Amendment of the U.S. Constitution and Art. 1 § 11 and Art. VI §§ 1, 5, and 7 of the Constitution of Virginia: (a) by the ongoing denial of access to impartial judicial review of the Sup. Ct. Va.'s usurping the power granted only to the General Assembly to create courts and appoint judges; and, (b) the 3rd Circuit's Local Rules 7 violation of FRAP 46 by automatically disbarring Rodriguez without notice or

hearing in violation of the *Void* Order Doctrine, to surreally "regard" the VSBDB *void* order as valid.

CONSTITUTIONS, FEDERAL AND VIRGINIA STATUTES INVOLVED ARE PUBLISHED IN THE ADDENDUM AT THE END

STATEMENT OF THE CASE

A. Background to Rodriguez' Litigation Against the Unauthorized Policies and Practices of DOJ.

Since 1982, Isidoro Rodriguez ("Rodriguez") has been a member in good standing of the S. Ct. Va.[1]

After serving in White House appointments in both the Carter and Reagan Administrations, and as a consultant to the Office of the Mayor, City of Washington, D.C., Rodriguez established and has maintained since 1987 to the present a successful international commercial and *pro hoc vice* federal civil litigation practice representing Hispanics, from Barranquilla, Colombia.[2]

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[1]At that time, Rodriguez also became a member of the U.S. Dist. Ct. for the E. D. Va and the U.S. Ct. of App. for the 4th Cir. In the early 1990's Rodriguez became a member of the bars of the U. S. Supreme Court, the U.S. Ct. of Appeals for the 2nd, 3rd, 11th, Fed., and DC Circuits, and U.S. Tax Court.

[2]After prevailing in this Court in *Martinez v. Lamagno and DEA/DOJ*, 515 U.S. 417 (1995), the *Legal Times* confirmed that Rodriguez was the only know U.S. sole practitioner residing in South America and appearing in the federal courts.

Subsequently, the record confirms that as a direct result of Rodriguez' various successful civil action against the unauthorized policies and practices of the U. S. Departments of Justice ("DOJ') targeting and discriminating against generally Hispanics, and specifically Colombians, a criminal enterprise was undertaken by DOJ to punish Rodriguez by depriving him of his rights as a citizen, including his right to his business, profession and employment.

As part of this criminal conspiracy, in violation of 18 U.S.C. § 1204, the government obstructed with Rodriguez' parental statutory rights to compel the securing of international visitations with his Son by permitting DOJ's independent contractor, the National Center for Missing and Exploited Children ("NCMEC"), their employees, the Fairfax County J&D District Court and Circuit Court, the Virginia Court of Appeals, and the S. Ct. Va. ("Va. Courts"), to fail to comply with their ministerial and judicial responsibilities under *Art 21* of the Treaty, and the Va. UCCJEA,[3] *Isidoro Rodriguez, Esq. and Isidoro Rodriguez-Hazbun v. NCMEC, et al.*, D.C. No. 03-0120 (Roberts, J.)("*Rodriguez I*").

Thus, from June 2002 until 2007, Rodriguez and his Son were deprived of their fundamental and statutory rights in their father/son relationship under the Treaty and Va. UCCJEA, by DOJ's obstructing and denying of access to an impartial court to compel it to secure the return of Rodriguez' Son to visit with his

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[3] *See Canter v. Cohen*, 442 F.3d 196 (4th Cir, March 2006).

father in United States from Colombia.[4]

Consequently, because of DOJ's obstruction and the denial of access to an impartial court to compel the government to secure the return his Son, Rodriguez did the following: (1) petitioned both Congress and the General Assembly of Virginia for an investigation of the collusion of DOJ and the courts to violate the Treaty and Va. UCCJEA;[5] (2) filed criminal complaints again-

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[4]Once Rodriguez' Son become 17 years-old, he immediately returned to the USA and Virginia to live with his father. The evidence confirms the motive of forcibly taking Rodriguez' Son from the United States to Colombia, and then obstructing Rodriguez' parental rights was to punish Rodriguez for his litigating against DOJ and the Federal Judicial Branch's policy to permit the government to assert that under the War Powers Act there are neither Constitutional prohibitions nor statutory restriction on the U.S. government's power. *See Cooperative Multiactive de Empeados de Distribuidores de Drogas (Coopservir Ltda.") v. Newcomb, et al.*, D.C. Cir. No 99-5190, S Ct. No 99-1893.

[5]Rodriguez' litigation coincided with the DOJ and the Federal Courts policy to assert that the government had world wide jurisdiction, absolute immunity, the right to deny access to the courts, the right to deny a jury trial for malfeasance, and U.S. citizens had no fundamental rights vis-a-vis the government, *See Martinez v. Lamagno and DEA*, 515 U.S. 417 (1995)(Tort action for negligence of DEA agent having sex and drinking while driving. Although this Court held that an Article III judge must provide independent judicial review the Attorney General's scope of employment certification, the District Court did not); *See also Organization JD Ltda. v. Assist U.S. Attorney Arthur P. Hui and DOJ*, 2nd Cir. No. 93-6019 and 96-6145; and, *Lopez v. First Union*, 129 F3rd. 1186 (11th Cir. 1997)(Lack of accountability for DOJ's violation of the Electronic Communications Privacy Act and the Right to Financial Privacy Act).

st the DOJ and Va. Courts on December 13, 2004; (3) based on this evidence of DOJ's criminal obstructing the rights of fathers a First Amended Verified Complaint was filed in *Rodriguez I* on March 7, 2005, to add a civil RICO cause of action; (4) filed both Federal Tort Claim and Virginia Tort Claim Notices against DOJ and the courts; and, (5) oppose the confirmation of John G. Roberts as Chief Justice based on the evidence of his violation of 18 U.S.C. § 1001, by the making false statement to Congress to aid and abet the criminal obstruction of Rodriguez' right as a father under the Treaty and Virginia's UCCJEA .

In retaliation for the filing of *Rodriguez I*, DOJ compounded its criminal obstruction of Rodriguez' parental rights in violation of 18 U.S.C. § 1204, by entering into a business conspiracy to damage Rodriguez' reputation, business, profession, and right to employment as an attorney in violation VA Code § 18.2-499 and 500, and 18 U.S.C. §§ 241, 242, and 1513.

In March 2005, after staying all action for more than twenty-six (26) months *Rodriguez I*, District Judge Richard Roberts summarily dismissed the cause of action under the Treaty as moot, and asserted of absolute judicial and executive branch immunity for criminal acts to summarily strike the RICO action and deny the right to a jury trial of the evidence of malfeasance.

B. Proceedings before the VSBDB and Mr. Banks

In furtherance of the criminal enterprise, DOJ's independent contractor Beltway attorneys/lobbyists Mr.

Eric Holder,[6] Ms. D. Jean Veta, and Covington & Burling LLP, as well as Ms. Susan Brinkerhoff, and Proskauer Rose LLP ("Holder *et al.*"), filed a fraudulent bar complaint with the VSBDB in October 2003 alleging that Rodriguez violated ethical standards by litigating to enforce his Federal and Virginia statutory rights to visitations with his son (A-37). Also, Holder *et al.,* conspired with Rodriguez' former client file a bar complaint for his litigating to enforce his statutory property right in his perfected Virginia Attorneys Lien under Va. Code § 54.1-3932, on approx. $10 Billion *treasure troves* sunk off the coast of Colombia (A-30). Finally, *Holder et al.,* conspired with the D.C. Court of Appeals Committee on Admission to shelve for two years Rodriguez' waiver application from July 2003 until June 2007, and then deny him of his rights to a hearing. *See* Petition for Writ of Mandamus and Prohibition, *In re Rodriguez,* D.C. Court of Appeals Docket No. 8-0A-26.

On October 27, 2006, disregarding the controlling case law as to the duty of DOJ and the Virginia Courts under the Treaty and Va. UCCJEA, *see Canter v. Cohen*, 442 F.3d 196 (4th Cir, March 2006), the VSBDB and its 1st Vice Chair, Mr. James Leroy Banks ("Banks") acted on the *Holder et al*'s bar complaint to investigate, prosecutes, and conduct an unauthorized disciplinary hearing and issue a *void* order revoking Rodriguez' license to practice law in Virginia for his litigating to enforce his rights under the Treaty and Va.

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[6] Mr. Eric Holder was confirmed on February 3, 2009, as Attorney General of DOJ.

UCCJEA, and for litigating to enforce his statutory property rights in his perfected Virginia Attorney's Lien (A-29). The VSBDB and Mr. Banks' *void* order was affirmed by the S. Ct. Va. on June 28, 2007 (A-2). This Court denied a petition for certiorari, *Isidoro Rodriguez v. Supreme Court of Virginia et al.,* (S. Ct. No. 07-419, November 2, 2007).

C. Proceedings Before the 3rd Circuit

On December 18, 2006, Rodriguez gave notice of the VSBDB *void* order to the 3rd Circuit, in support of a demand for a hearing and its protection under 18 U.S.C. § 3771, based on the evidence of a criminal conspiracy to enforce the *void* order in violation of federal statutory rights.

A year and a half after Rodriguez' notice, the 3rd Circuit sent letters on May 28, 2008: (i) to the VSB to advise them that "once the license to practice law of Mr. Rodriguez was revoked by Virginia, that action was, 'immediately and automatically effective in this Court."(A-23); and (2) to Rodriguez to advise that he had been automatically disbarred without notice or hearing, that his papers for a show cause hearing had to be resubmitted as a request for reinstatement, and that pursuant to the rules of the Court to petition for protection under 18 U.S.C. § 3771, a $450.00 filing fee had to be submitted. (A-25).

Thus the Standing Committee on Attorney Discipline of the 3rd Circuit, conducted a reinstatement hearing on September 23, 2008. On October 21, 2008, a Report and Recommendation was issued affirming the

automatic reciprocal disbarment without notice and show cause hearing under Local Rule 7 (Add-C), based on the VSBDB *void* order.

Failing to cite any legal authority to permit either the VSBDB acting as a "court" or their violation of federal statutory rights, the Committee surreally assumed the *Void* Order Doctrine away by declaring that "under well-established principles this Court should regard the Virginia proceeding as valid to the extent that they depend on issues of Virginia law" (A-13, 17, and A-18). Finally, reinstatement was denied because it held that Rodriguez' challenge based on the VSBDB *void* order did not satisfy the additional requirements of Local Rule 12.4 (A-21).[7]

Rodriguez filed exceptions to the Report and Recommendation. On December 10, 2008, the 3rd Circuit affirmed the disbarment without notice and hearing and the denial of reinstatement (A-1).[8]

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[7]Rodriguez had the burden to address not the criteria under *Selling v. Radford*, 243 U.S. 46 (1917), but although neither allegations of moral wrong, nor legal incompetence, nor lack of learning in the law were made, Rodriguez had to divine responses to these issues for readmission "to practice before this Court and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice or subversive to the public interest."

[8]The evidence confirms that only after the secrete meetings were held by the U.S. Judicial Conference in September 2008, did the 3rd and 4th Circuit schedule their perfunctory hearings. The 4th Circuit also assumed away the *Void* Order Doctrine to hold-

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Rodriguez calls for the exercise of this Court's power of supervision over the 3rd Circuit to vacate the order of automatic disbarment without notice or hearing, because: (a) the 3rd Circuit's Local Rules 7, is a far departure, if not the total disregard, of the requirements of notice and an impartial show cause hearing prior to disbarment, mandated by *Selling v. Radford*, 243 U.S. 46 (1917), *Konigsberg v. State Bar Assembly California*, 353 U.S. 252 (1957), *Theard v. United States*, 354 U.S. 278 (1957), the Rules Enabling Act 28 U.S.C. § 2072(b)("Rules Enabling Act"), and requirement of FRAP Rule 46; and, (b) the 3rd Circuit has totally disregarded its duty to provide impartial judicial review pursuant to *Marbury v. Madison*, 1 Crunch 137 (1803), by disregarding all legal authority in support of the *Void* Order Doctrine thereby depriving Rodriguez of substantive and procedural due process under the 5th and 14th Amendments to the U.S. Constitution, Article I § 11 of the Virginia Constitution consistent with the *Void* Order Doctrine.

I. THE AUTOMATIC DISBARRING OF RODRIGUEZ WITHOUT NOTICE OR HEARING VIOLATED THE CONTROLLING DECISIONS OF *SELLING, KONIGSBERG*, AND *THEARD*, AND FRAP RULE 46.

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without citing any authority that it "viewed" the VSBDB *void* order valid. *See In the Matter of Isidoro Rodriguez*, S.Ct Docket No. 08-942, filed January 18, 2009 (Conference date pending).

This Court had held that: "Disbarment, designed to protect the public, is a punishment or penalty imposed. . . .[Thus, t]hese are adversary proceedings of a quasi-criminal nature." *In re Ruffalo*, 390 U.S. 544, 550-551 (1968).

Accordingly, compliance with the requirement of both substantive and procedural *due process* must attach to not only the VSBDB disciplinary proceeding, but also to the proceedings of the 3rd Circuit authorized under FRAP Rule 46, pursuant to the delegation under the Rules Enabling Act.

This is because FRAP Rule 46, follows the general definition of *due process* as, "**the right to a fair hearing before a tribunal with the power to decide the case.**" Bryan A. Garner, Black's Law Dictionary, at page 538 (8th ed. 1999). (Emphasis added). Thus, a valid judgment may not be rendered by a tribunal without judicial authority and jurisdiction because it would be a violation of the constitutional protections of *due process* under both the U. S. and Virginia Constitutions. *See* Restatements, Judgments § 4(b); *See also, Earle v. McVeigh*, 91US 503, 23 L Ed 398 (1999).

However, this was not done under the 3rd Circuit's Local Rule 7. Therefore, because FRAP Rule 46 authorizes disbarment from a federal court only after Rodriguez had been disbarred by a "court," and only after he has been given a hearing and opportunity to challenge the disbarment proceedings, the 3rd Circuit order -- automatically disbarring Rodriguez without notice or hearing -- must be vacated by this Court.

Furthermore, this Court has stated that the standard in determining if a violation of *due process* has occurred is, "to see whether this process conflicts with any of the [Constitutional] provisions. If not found to be so, we must look to those statute law . . . ." *Murray's Lessee v. Hoboken and Improvement Co.*, 18 How (59 U.S.) 272, 276-277 (1856).

Here the evidence is that Local Rule 7 automatic disbarment based on a *void* order issued by an unauthorized attorney disciplinary system created in violation of Article VI § 1, § 5, and § 7 of the Constitution of Virginia, and Va. Code § 54.1-3910, § 54.1-3915, § 54.1-3935. Also, the evidence confirms that the VSBDB and Mr. Banks issued said *void* order to punish Rodriguez in retaliation for petitioning Congress and litigating to enforce his federal statutory rights thereby violation not only the 1st, 5th and 14th Amendments to the U.S. Constitution, but too, 18 U.S.C. §§ 241, 242, and 1513.

Disregarding the above the 3rd Circuit automatic disbarment-without either notice and hearing--and its surreal "regarding" of the *void* order as valid, deprived Rodriguez of an "**opportunity to be heard**" and right to demonstrate an "**infirmity of proof**", that grave reasons exist for this Court to reverse pursuant to *Selling v. Redford*, 243 U.S. 46, 51 (1917).

In *Selling*, supra, this Court held that solely by the action of "**a court**" with jurisdiction may one who has secured admission in a federal court is to be disbarred from practicing before it or any Federal Court and by satisfying the state proceeding was: first, not

"wanting in due process," by a lack of "notice and opportunity to be heard;" second, that there not an "**infirmity of proof as to facts found to have established the want of fair private and professional character** as to give rise to a clear conviction on our part that we could not, consistently with our duty, accept as final the conclusion on that subject," or third, "**that some other grave reason existed** which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, **under the principles of right and justice**, we were constrained so to do." *Id.* At 51. (Emphasis added).[9]

Later, this Court in *Konigsberg v. State Bar of California*, 353 U.S. 252 (1957), stated that,

> "it is equally important that the State not exercise this power in an arbitrary or discriminatory manner, nor in such way as to impinge on the freedom of political expression or association. **A bar composed of lawyers of good character is a worthy objective, but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be**

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[9]This rule as to federal judicial review of disbarment proceedings is consistent with that of *Ex parte Burr*, 9 Wheat. 529 at 532, announced by Chief Justice Marshall, and has been the guide for federal courts, that is Court will interpose itself if there is "**irregularity in the mode of proceeding**."*See also, Ex parte Secombe*, 19 How. 9; *Ex parte Bradley*, 7 Wall. 364; and, *Thatcher v. United States*, 212 F. 801, 804.

unintimidated -- free to think, speak, and act as members of an Independent Bar." *Id* at 273. (Emphasis added)

Then in *Theard v. United States*, 354 U.S. 278 (1957), this Court held that: (1) while a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route;[10] (2) ample opportunity must be afforded to show cause why an accused practitioner should not be disbarred, and an order of disbarment by a state court is not conclusively binding on federal courts; and, (3) the "principles of right and justice" do not require a federal court to enforce automatic disbarment of a lawyer, but the standards defined in *Selling*, *supra*, are to be followed.

However, in violation of the above controlling case law Rodriguez has been denied substantive and procedural due process by the 3rd Circuit automatically–without notice or hearing–disbarring him based on a *void* order issued by an entity without

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[10]In *In re Disbarment of Isserman*, 345 U.S. 286 at 288, 73 S.Ct. 676, 97 L.Ed. 1013 (1953), this Court reconfirmed that disbarment by a state does not automatically disbar members of a Federal bar. Also, in *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232, 239, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957), the U.S. Supreme Court went on to hold at footnote 5, "[w]e need not enter into a discussion whether the practice of law is a "right" or 'privilege.' Regardless of how the State's grant of permission to engage in this occupation is characterized, **it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace**." *Ex parte Garland*, 4 Wall. 333, 379 (Emphasis added).

any Constitutional or statutory authority. Also, the evidence confirms a criminal conspiracy to enforce the *void* order so to punished Rodriguez in retaliation for petitioning the legislative branch and for litigating as an independent attorney to enforce his Federal and Virginia statutory parental and property rights.

For the above reasons this Court cannot allow the 3rd Circuit to surreally "regard" the proceeding wherein the VSBDB and Mr. Banks issued the *void* order as valid. To do so permits the violating of their oath to impartial judicial review as stated in *Marbury v. Madison*, 1 Cranch 137 (1803), to enforce the mandate of separation power under Art. VI, § 1, § 5, and § 7 of the Virginia Constitution and Va. Code §§ 54.1-3910, 3915, and 3935.[11]

Also, the 3rd Circuit's surreal and absurd order deprived Rodriguez of his right to due process under the above case law, as well as Fifth and Fourteenth Amendments to the U.S. Constitution, and the Rules Enabling Act, FRAP 46 must be reverse.[12]

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[11]As Federalist 47, states the Virginia's Constitution declares, "that the legislative, executive, and judicial departments, shall be separate and distinct; so that neither exercise powers properly belonging to the other. . . ." Washington Square Press, p 109.

[12]Justices Douglas and Black, stated in their dissent *In Matter of Crow*, 359 U.S. 1007 at 1009, 79 S.Ct. 1152, 3 L.Ed.2d 1025 (1959), that,

> It is for us to make our own determination as to the fitness of an attorney to remain on our rolls. . . . This is

Finally, to not reverse the 3rd Circuit, this Court would be an act of aiding and abetting the on going criminal conspiracy in violation of to Va. Code §§ 18.2-481 and 499, and 18 U.S.C. §§ 241, 242, and 1513.

II. THE 3rd CIRCUIT HAS VIOLATED ITS DUTY OF IMPARTIAL JUDICIAL REVIEW PURSUANT TO THE MANDATE OF THE *VOID* ORDER DOCTRINE.

The basic issue before this Court, as well as that which was before the 3rd Circuit, is whether the plain language of Art. VI, § 1, § 5, and § 7 of the Virginia Constitution and Va. Code §§ 54.1-3910, 3915, and 3935, controls this challenge to the VSBDB *void* order. If Rodriguez is correct, then the procedural defects of the VSBDB and Mr. Banks usurping judicial authority confirm violation of the requirements of notice, due process and other constitutional rights.

Here the evidence confirms that the VSBDB and Mr. Banks have neither the jurisdiction nor judicial power to act as a "court" and "judges," because

First, pursuant to Article VI § 1 and § 7 of the Constitution of Virginia **solely** the General Assembly has the authority to establish "courts of records" in Virginia and appoint judges. Thus, as explained in

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not the first time that state disbarment proceedings have been challenged as lacking in procedural due process . . . . (Citation omitted) [This case suggest] that **the requirements of fair procedure, without which no citizen can be deprived of his livelihood, were not satisfied** . . . .(Emphasis added).

Legal Club of Lynchburg v. A.H. Light, 137 Va. 249, 119 S.E. 55 (1923), the judicial power to revoke an attorney's license is controlled by the General Assembly,

> Independent of statutory authority, all courts of record in Virginia have inherent power in a proper case to suspend or annul the license of an attorney practicing in the particular court which pronounces the sentence of disbarment. **The power to go further and make suspension or revocation of license effective in all other court of the Commonwealth must be conferred by statute.** *Fisher's Case, 6 Leigh* (33 Va.) 619. (Emphases added).

Second, the General Assembly enacted Va. Code § 54.1-3935, to extend the power beyond the limits defined in *Fisher's Case, supra.*, thereby established the exclusive procedure under which a "court" could lawfully revoke a Virginia attorney's license. *see* When Has the Supreme Court of Appeals Original Jurisdiction of Disbarment Proceedings? R.H.C. Virginia Law Review, Vol. 10, No. 3 (Jan. 1924), pp. 246-248.[13]

However, in violation of the Virginia law the 3rd

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[13] Judicial power," is defined as, "[t]he authority vested in courts and judges to hear and decide cases and make binding judgements on them; . . . . " Bryan A. Garner, Black's Law Dictionary, at 864 (8th ed. 1999). "**The power to discipline [an attorney] is judicial in nature.**" *Norfolk Bar Ass'n v. Drewry*, 161Va. 833 at 836, 172 S.E. 282 (1934).(Emphasis added).

Circuit has arrogantly permitted the usurping of the legislative power granted only to the General Assembly by"regarding" the VSBDB *void* order as valid based on the fiat of judicial rule making.[14] This was a clear violation of the *Void* Order Doctrine.

A. The *Void* Order Doctrine In Federal Court.

This Court has held that an *invalid* and *void* order can be attacked in any proceeding where they come into issue. *Pennoyer v. Neff,* 95 US 714 (1877); and, *Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974)("a void judgment is no judgment at all and is without legal effect") (Emphases added).

Originally under this theory, a statute or judicial action contrary to the constitutional is considered *void* in its entirety and inoperative as if it had no existence from the time of its enactment. It is for this reason, that the genesis and the meaning of the *Void* Order

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[14]In *Cohens v. Virginia*, 19 U.S. 264, 6 Wheat. 264, 404 (1821), this Court stated:

> The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. **We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.** Questions may occur which we would gladly avoid; but we cannot avoid them. All we can do is, to exercise our best judgment, and conscientiously to perform our duty. (Emphasis added)

Doctrine has its root in due process concerns.[15]

The origin of this doctrine in the United States lie in *Marbury v. Madison*, 1 Crunch 137, 140 (1803), in which Chief Justice Marshall wrote that "a law repugnant to the constitution is *void*."

In *Marbury v. Madison*, in a brilliant display of deductive logic, Chief Justice John Marshall confirmed that judicial review is a constitutional imperative by pointing out certain fundamental principles of our constitutional system: first, that the people had united to establish a limited government; second, that they organized it into three departments and assigned certain powers to each, while at the same time setting limits to the exercise of those powers; and, third, these limits were expressed in a written constitution, which would be a useless document "if these limits may, at any time, be passed by those intended to be restrained." *Id.* at 140.

Consequently, because the Constitution is "a superior paramount law," it may not be changed by ordinary legislation or judicial fiat. This means that neither a legislative nor judicial act contrary to Federal or Virginia Constitution is law or a valid order.

Oliver P. Field, the most noted scholar on this

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[15] As early as *The Case of the Marshalsea*, 77 Eng. Rep. 1027, 1038-41 (K.B. 1613), Sir Edward Coke found that the power of judges to act outside of their jurisdiction would be *void*, and actionable.

issue has suggested that the *void* Order Doctrine is premised on the historical American concern over excessive authority asserted by a tyrannical executive, legislative, or judicial branch in violation of the rights of individuals protected by the Constitution. *See* Erica Frohman Plave, The Phenomenon of Antique Laws: Can a State Revive Old Abortion Laws in a New Era?, 58 Geo. Wash. L. Rev. 111 (1990). *See also Kole v. City of Chesapeake*, 439 S.E.2d 405, 408-09 (Va. 1994). Field explains that whereas the Constitution prohibits the legislature and executive from overstepping their limits, the courts came to regard themselves as the ultimate guardians of individual rights. Any act that invaded these rights was to be judged unconstitutional and treated as though it never existed.[16]

B. The *Void* Order Doctrine In Virginia.

Likewise in Virginia, "[a] *void* judgment is one that has been . . . **entered by a court that did not have jurisdiction over the subject matter**. . . . " *Rook v. Rook*, 233 V. 92, 353 S.E2d 756, 758 (1987)(Emphasis added).

As explained in *Nelson v. Warden*, 262 Va. 276, 552 S.E.2d 73 (2001),

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[16]Since a void order has no legal force or effect there can be no time limit within which to challenge the order or judgment. Further, since the order has no legal force or effect, it can be repeatedly challenged, since no judge has the lawful authority to make a void order valid. *Bates v. Board of Education, Allendale Community Consolidated School District No. 17*, 136 Ill.2d 260, 267 (1990) (a court "cannot confer jurisdiction where none existed and cannot make a *void* proceeding valid."); *People ex rel. Gowdy v. Baltimore & Ohio R.R. Co.*, 385 Ill. 86, 92, 52 N.E.2d 255 (1943).

> **Subject matter jurisdiction is granted by constitution or statute, it cannot be waived, and any judgment rendered without it is *void ab initio.*** Lack of subject matter jurisdiction may be raised at any time, in any manner, before any court, or by the court itself. (Emphasis added).

C. The *Void* Order Doctrine In Pennsylvania.

As explained in *Romberger v. Romberger,* 290 Pa. 454, 457, 139 A. 159, 160 (1927), a *void* judgement is a "**mere blur on the record, and which it is the duty of the court on its own motion to strike off, whenever it attention is called to it.**" (Emphasis added). The policy for this is clear, where there is no jurisdiction or a usurping of jurisdiction a valid judgement canned be entered. *Comm.ex rel. Penland v. Ashe*, 341 Pa. 337, 341, 19 A2d 464, 466 (1941)("It is certainly true that a *void* judgement may be regarded as no judgement at all; and every judgement *void*, which clearly appears on its own face to have been pronounced by a court having no jurisdiction or authority in the subject matter.")

Thus, the law is well-settled that a *void* order or judgment is *void* even before reversal. *Vallely v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 41 S.Ct. 116 (1920) ("Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, **but simply void, and this even prior to reversal.**" [Emphasis added]).

In a case similar to the one at hand, where there too a State entity acted in violation of the State's Constitution, this Court stated that, "[a]n unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." *Norton v. Shelby County*, 118 U.S. 425 at 442 (1886) (In *Norton*, the Court found that, because the new requirements of the Tennessee Constitution were not followed in the creation of the Board, no subsequent act of the county court could operate to render valid a previous *void* issue of bonds).[17]

Consistent with these long established precedents this Court in recently in Nguyen v. United

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[17]A *void* order can be challenged in any court. *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907) ("jurisdiction of any court exercising authority over a subject `may be inquired into in every other court when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings,' and the rule prevails whether `the decree or judgment has been given, in a court of admiralty, chancery, ecclesiastical court, or court of common law, or whether the point ruled has arisen under the laws of nations, the practice in chancery, or the municipal laws of states.'"); *In re Marriage of Macino*, 236 Ill.App.3d 886 (2nd Dist. 1992) ("if the order is *void*, it may be attacked at any time in any proceeding, "); *Evans v. Corporate Services*, 207 Ill.App.3d 297, 565 N.E.2d 724 (2nd Dist. 1990) ("a *void* judgment, order or decree may be attacked at any time or in any court, either directly or collaterally"); *Oak Park Nat. Bank v. Peoples Gas Light & Coke Co.*, 46 Ill.App.2d 385, 197 N.E.2d 73, 77 (1st Dist. 1964) ("that judgment is *void* and may be attacked at any time in the same or any other court, by the parties or by any other person who is affected thereby."). [Emphasis added].

States, 539 U.S. 69 (2003), held that any decision of an improperly constituted judicial body must be vacated, i.e. judicial authority cannot be delegated (*Judici officium sum excedenti non paretur*, **"To a judge who exceeds his office or jurisdiction no obedience is due").**

In total disregard of the above case law, the Constitution of Virginia,[18] and Va. Code,[19] in violation of the *Void* Order Doctrine, the 3rd Circuit without any authority "regarded" the VSBDB and Mr. Banks *void* order as valid. This cannot be permitted, since no court can make a *void* order valid.[20]

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[18]Pursuant to Article VI, § 5 of the Constitution of Virginia, and VA. Code § 54.1-3915, as well as "the well recognized rule of construction that if a Rule of the Supreme Court [of Virginia] is at variance with a statutory enactment, the terms of the statute must prevail." 1996 Va. AG 23, at page 2, the S. Ct. Va. has neither authority to delegate judicial power to the VSBDB nor the power to create an attorney disciplinary system in violation of that established by the General Assembly under Va. Code § 54.1-3935.

[19]Under Va. Code § 54.1-3910 and 3935, the Virginia State Bar ("VSB") is merely an administrative arm of the S. Ct. Va. with **limited administrative authority** to aid a court of record upon its request to conduct investigation and the prosecution of a complaint filed with the court. *See Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), at footnote 2.

[20] As explained by the S. Ct. Va. in *Morrison v. Bestler*, 239 Va. 166, 167-170, 387 S.E 2d 753 (1990),

> The term jurisdiction embraces . . . subject matter jurisdiction, which is the authority granted by the constitution or statute to adjudicate a class of cases or controversies. . . .**which cannot be waived or conferred on the court by agreement of the parties**. *Lucas v. Biller*, 204

To accept the paradigm which they VSB and the Va. S. Ct. have created, the 3rd Circuit sanctioned the creation of an illegal disciplinary system in violation of the constitutional law and the mandates of the General Assembly. The 3rd Circuit has added and abetted a criminal conspiracy by the VSB's investigating, prosecuting, and deciding a bar complaints against Rodriguez for his litigating according to statutory authority. The 3rd Circuit has denied access to judicial review by an impartial court and judge. In summary, the 3rd Circuit has allowed substantive and procedural due process, as well as the right to access to an impartial court to go right out the window, by surreally regarding the VSBDB and Mr. Banks *void* order as valid.

III. THE 3rd CIRCUIT VIOLATED THE RULES ENABLING ACT BY ENFORCING THE *VOID* ORDER TO PUNISH RODRIGUEZ FOR HIS LITIGATING AS A FATHER TO ENFORCE HIS "SUBSTANTIVE" STATUTORY RIGHTS.

To place control on the violation of the rights of citizens by the courts, Congress "flex[ed] its legislative muscle in the procedural rule making arena," by pass-

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Va. 309, 313, 130 S.E.2d 582, 585 (1963). A defect in jurisdiction cannot be cured . . . . While a court always has jurisdiction to determine whether it has subject matter jurisdiction, **a judgment on the merits made without subject matter jurisdiction is null and void**. *Barnes v. American Fert. Co.*, 144 Va. 692, 705, 130 S.E. 902, 906 (1925). **Likewise, any subsequent proceeding based on such a defective judgment is void or a nullity**. *Ferry Co. v. Commonwealth*, 196 Va. 428, 432, 83 S.E.2d 782, 784 (1954). (Emphasis added).

ing the Rules Enabling Act, 28 U.S.C. § 2072 (1982). Linda S. Mullenix, Judicial Power and the Rules Enabling Act, 46 Mercer L. Rev. 733, 735 (1995); *see also* Linda S. Mullenix, Hope Over Experience: Mandatory Informal Discovery and the Politics of Rule making, 69 N.C. L. Rev. 795, 798-800 (1991) (discussing "enhanced public participation and scrutiny . . . [in] judicial rule formation").

This Court has held that the Federal Rules of Appellate procedure must be interpreted in keeping with the Rules Enabling Act, which mandate that said Rules "shall not abridge, enlarge or modify substantive rights." *Amchem Products, Inc. v. Winsor*, 117 S.Ct. 2231, 2244 (1997).

Thus, based on the Rules Enabling Act, 28 U.S.C. § 2072(b), the 3rd Circuit cannot use its Local Rule 7 to deprive Rodriguez of his substantive rights protected by the U.S. Constitution, federal statute, and the Code of Virginia.

In the instant action the record establishes that VSBDB and the S. Ct. Va. have issued a *void* order by violating Va. Code § 54.1-3915 (Add-e), to punish Rodriguez for exercising his substantive rights of: first, petitioning the General Assembly and Congress for an investigation of the unlawful collusion of DOJ with the Federal and Courts of Virginia: and second, for litigating to enforce his statutory visitation rights as a parent pursuant to *Art 21* of the Treaty, and Va. UCCJEA (*see Canter v. Cohen*, 442 F.3d 196 (March 21, 2006); 2006 U.S. App. LEXIS 6915) (A-5, Footnote 2).

In *McDonald v. Smith*, 472 U.S. 479, 486 (1985), the U.S. Supreme Court recognized that the right to petition the Government requires stringent protection. "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." *United States v. Cruikshank*, 2 Otto 542, 92 U.S. 542, 552, 23 L.Ed. 588 (1876). The right to petition is "among the most precious of the liberties guaranteed by the Bill of Rights," *Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, 222, 88 S.Ct. 353, 356, 19 L.Ed.2d 426 (1967), and except in the most extreme circumstances citizens cannot be punished for exercising this right "without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions," *De Jonge v. Oregon*, 299 U.S. 353, 364, 57 S.Ct. 255, 260, 81 L.Ed. 278 (1937).

Furthermore, pursuant to Article VI § 5 of the Constitution of Virginia, and Va. Code § 54.1-3915, the S. Ct. Va. is prohibited from promulgating court rules which conflict with or limit an attorney's right to litigate to enforce statutory rights, including the right to petition Congress and the General Assembly. *See* 1996 Va. AG 23. Consistent with this restriction, as noted above even the *Rules of the Virginia Supreme Court* has prohibited the VSB from investigating an attorney for enforcing his statutory rights.

For the above reasons, the 3rd Circuit cannot invoke Local Rule 7 to permit the VSBDB and S. Ct. Va.'s use of *void* orders violating the prohibition against the taking of disciplinary action against

Rodriguez for petitioning the legislature and litigating to enforce his substantive federal statutory rights to sue for damages for the obstruction of his right as a parent and depriving him of his property and employment right as an attorney.

VI. THIS 3rd CIRCUIT HAS NO AUTHORITY TO "REGARD" THE VSBDB *VOID* ORDER AS VALID.

History reports that Napoleon at his coronation took the imperial crown out of the hands of the Pope and crowned himself King. However, the Judges of the 3rd Circuit do not have that prerogative, since upon accepting their office, they have taken an oath to support the constitution of the United States.[21]

Here the language in *Cohens v. Virginia*, supra, must be restated:

> [Courts] have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution.[22]

The benchmark for accountability of employees

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[21]Further, if the judge had enlisted in the U.S. military, they subscribed to a lifetime oath, under 10 U.S.C. § 502.

[22]Va. Code§ 18.2-481(5)(Add-f), makes it a crime for a court to, **"[r]esisting the execution of the laws under color of its authority."** (Emphasis added).

of the government can be found in *United States v. Lee*, 106 U.S. 196, 220 (1882), wherein the U.S. Supreme Court stated that,

> [n]o man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives. (Emphasis added).

More recently the United States Supreme Court held in *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) that,

> when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States. [Emphasis supplied in original].

In total disregard of these holding, the 3rd

Circuit"regarded" the VSBDB *void* order as valid.

The use of the *void* order of the VSBDB by the Federal and Virginia Malfeasors as the linchpin to punish and silence Rodriguez for being an independent federal civil rights litigation attorney brings into focus the prophetic dissent of Associate Justice Douglas in *Lathrop v. Donahue*: 367 U.S. 820 at 883-885 (1961). *See* The Fraternity: Lawyers and Judges in Collusion, by John Fitzgerald Molloy. St. Paul, Minn.: Paragon House, *see also* "How to Save the Courts" by Justice Sandra Day O'Conner, Parade Magazine, February 24, 2008.

This is a deprivation of the right to due process because neither a Federal nor State court can aid and abet any case which clearly violates the Constitution or civil/criminal laws of the United States. *U.S. v. Murphy* 768 F.2d 1518 (7th Cir. 1985)

Stated another way, pursuant to 18 U.S.C. §§ 241, 242, and 1315, the 3rd Circuit and this Court are prohibited from enforcing a *void* order issued as part of a conspiracy to punish Rodriguez for repairing to federal courts to enforce his Federal statutory rights as a parent and attorney, because, a "right . . . granted by Congress and cannot be taken away by the State." (Emphasis added). *Donovan v. City of Dallas*, 377 U.S. 408, 413 (1964).

Thus, against the Constitution's mandated due process guarantees the 3rd Circuit cannot use Local Rule 7, to give effect to the *void* order, otherwise the Court would be permitting egregious trespassing upon

Rodriguez' Federal rights.

CONCLUSION

Here the record indisputable confirms that *Holder et al.*, as well as Rodriguez' former client filed two fraudulent bar complaints to retaliate, punish and stigmatize Rodriguez. The record also confirms that the VSBDB and Mr. Banks issued a *void* order and conducted "prosecutorial vindictiveness" in criminal violation of 18 U.S.C. §§ 241, 242, 1204, and 1513: (i) because Rodriguez litigated against DOJ to enforce Rodriguez' statutory rights as a father to compel compliance with the ministerial and judicial duties under the Treaty, US Code and Va UCCJEA (App-18); (ii) sued for damages; and, (iii) because Rodriguez exercised his right under the First Amendment and Constitution of Virginia to petition Congress and Virginia General Assembly to investigate the unlawful collusion of DOJ with the Federal and Virginia Judicial Branch.

Furthermore, the evidence confirm that neither the VSBDB nor Mr. Banks has jurisdiction or judicial authority under Article VI, § 1, § 5, and § 7 of the Constitution of Virginia, Va. Code §§ 54.1-3910, 3915, and 3935 (Add-D and E), to act respectively as a "court" or to perform with the judicial authority of a "judge" so to legally revoke Rodriguez' license. Thus, pursuant to the *Void* Order Doctrine the S. Ct. of Va. is without judicial authority to affirm the *void* order so to make it valid.

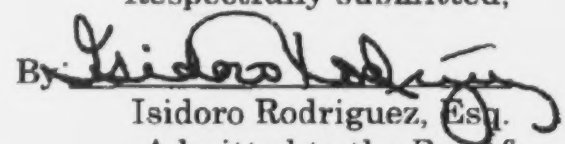
Finally, the evidence confirms that the 3rd

Circuit trampled on the mandate of judicial review by surreally "regarding" the VSBDB had jurisdiction and judicial authority to revoke Rodriguez' license.

For the above reasons, the Petition must be granted, because the 3rd Circuit has deprived Rodriguez of his right to practice in violation of *due process* under the 5th and 14th Amendments.

Furthermore, the Court must comply with the mandates under 18 U.S.C. § 3771 by taking immediate steps to protect Rodriguez as a victim from the on going federal criminal conspiracy in violation of 18 U.S.C. §§ 241, 242, and1513.

Respectfully submitted,

By: 

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ADDENDUM TABLE OF CONTENTS

VIRGINIA CRIMINAL STATUTES VIOLATED

VIRGINIA CIVIL CODE INVOLVED

U.S. CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment of the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment of the United States Constitution provides:

No person shall . . . be deprived of life, liberty, or property, without due process of law; . . . .

The Due Process Clause of Section 1 of the Fourteenth Amendment to the United States Constitution provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

FEDERAL STATUTES VIOLATED

RULES ENABLING ACT--28 U.S.C. § 2072(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and the courts of appeal.

(b) Such rules shall not abridge, enlarge, or modify any substantive right. . . .

Federal Rules of Appellate Procedure Rule 46(b) Suspension or Disbarment

(1) **Standard.** A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred form the practice by any other c\court; or

(B) is guilty of conduct unbecoming a member of the

court's bar.

(2) Procedure. The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) Order. The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
RULES OF ATTORNEY DISCIPLINARY ENFORCEMENT, MARCH 1991

RULE 7. INITIATION OF DISCIPLINARY PROCEEDINGS

When a member of the bar of this Court is . . . disbarred by another court, . .. , the . . . disbarment . . . , is immediately and automatically effective in this Court and the Chairperson of the Standing Committee enters an order imposing the aforesaid discipline, but failure to enter an order does not affect the effective date of the suspension or disbarment.

FEDERAL CRIMINAL STATUTES VIOLATED

18 U.S.C. § 241 - Conspiracy against rights,
states in relevant part, "[i]f two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; . . . They shall be fined under this title or imprisoned not more than ten years,

or both . . . .

18 U.S.C. § 242 - Deprivation of rights under color of law, states in relevant part that, "[w]hoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, . . ., shall be fined under this title or imprisoned not more than one year, or both . . .

18 U.S.C. § 1204 - International parental kidnapping.--(a) Whoever. . . retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

18 U.S.C. § 1513. Retaliating against a witness, victim, or an informant, states in relevant part, "(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

CONSTITUTION OF VIRGINIA INVOLVED

Article I, § 11. Due Process of Law; . . . ; provides,[t]hat no person shall be deprived of his . . . property without due process of law; . . . .

Article I, § 12. Freedom of Speech and the press; right to

peaceably assemble, and to petition.
That the freedom of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people to peaceably to assemble, and to petition the government for the redress of grievances.

Article VI, § 1. Judicial power; jurisdiction. — The judicial power of the Commonwealth shall be vested in a Supreme Court and in such other courts of original or appellate jurisdiction subordinate to the Supreme Court **as the General Assembly may . . . establish**. (Emphasis added).

Article VI, § 5. Rules of practice and procedure. — The Supreme Court shall have the authority to make rules governing the course of appeals and the practice and procedures to be used in the courts of the Commonwealth, **but such rules shall not be in conflict with the general law as the same shall, from time to time, be established by the General Assembly**.(Emphasis added)

Article VI, § 7. Selection . . . of judges. The justice of the Supreme Court of shall be chosen by vote of the . . . General Assembly. . . . **The judge of all other courts of record shall be chosen by the . . . General Assembly . . . .** (Emphasis added).

VIRGINIA CRIMINAL STATUTES VIOLATED

Va. Code § 18.2-481. Treason defined; how proved and punished. — Treason shall consist only in: . . . . (5)

Resisting the execution of the laws under color of its authority. Such treason,. . . , shall be punishable as a Class 2 felony.

Virginia Code § 18.2-499. Combination to injure others in their reputation, trade, business or profession: right of employees

(a) Any two or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of wilfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever, or for the purpose of wilfully and maliciously compelling another to do or perform any act against his will, or preventing or hindering another form doing or performing any lawful act, shall be jointly and severally guilty of a Class 3 misdemeanor. . . .

VIRGINIA CIVIL CODE INVOLVED

Va. Code § 54.1-3910. Organization and government of Virginia State Bar. --The Supreme Court may promulgate rules and regulations organizing and governing the Virginia State Bar. **The Virginia State Bar shall act as an administrative agency of the Court for the purpose of investigating and reporting violations of rules and regulations adopted by the Court under this article**. . . . (Emphasis added)

Va. Code § 54.1-3915. Restrictions as to rules and regulations.---Not withstanding the foregoing provisions of this article, **the Supreme Court shall not promulgate rules or regulations prescribing a code of ethics governing the professional conduct of attorneys which are inconsistent with any statute**; . . . . (Emphasis added).

Va. Code § 54.1-3935. Procedure for revocation of license.

A. **If the Supreme Court, the Court of Appeals, or any circuit court of this Commonwealth** observes, or if a complaint, verified by affidavit is made by any person to such court, that any attorney has . . . violated the Virginia Code of Professional Responsibility, **the court may assign the matter to the Virginia State Bar for investigation**. Upon receipt of the report of the Virginia State Bar, **the court** may issue a rule against such attorney to show cause why his license to practice law shall not be revoked. If the complaint, verified by affidavit, is made by a district committee of the Virginia State Bar, **the court** shall issue a rule against the attorney to show cause why his license to practice law shall not be revoked.

B. If the rule [to show cause] is issued by the Supreme Court . . . the rule shall be returnable to the Circuit Court of the City of Richmond. At the time the rule is issued by the Supreme Court, the Chief Justice shall designate three circuit court judges to hear and decide the case. . . . In proceedings under this section, the court shall adopt the Rules and Procedures described in Part Six, Section IV, Paragraph 13 of the Rules of Court.

C. **Bar Counsel of the Virginia State Bar shall prosecute the case. . . .**

D. Upon the hearing, **if the attorney is found guilty by the court**, his license to practice law in this Commonwealth shall be revoked . . . . . (Emphasis added)

APPENDIX
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PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT No. 06-9518
C.A. Misc Record No. 08-8037

In the Matter of: Isidoro Rodriguez, Esq.

ORDER

Present: Scirica, Chief Judge, Sloviter, McKee, Rendell, Barry, Ambro, Fuentes, Smith, Fisher, Chagares, Jordan and Hardiman, Circuit Judges

This order is issued pursuant to Rule 12.4 of the Third Circuit Rules of Disciplinary Enforcement with respect to an application for reinstatement filed by Isidoro Rodriguez, Esquire, a member of this Court's bar.

On September 23, 2008, the Standing Committee on Attorney Discipline held a hearing regarding Mr. Rodriguez's reinstatement application. On October 21, 2008, the Standing Committee on Attorney Discipline filed a Report and Recommendation recommending that Mr. Rodriguez's application for reinstatement be denied. Mr. Rodriguez filed Exceptions to the Report and Recommendation on November 5, 2008. Subsequently, the Report and Recommendation, the Exceptions thereto, and the record in the disciplinary proceeding were submitted to the active judges of the Court for consideration.

On consideration of the Report and Recommendation, the Exceptions to the Report and

Recommendation, and the record referred to the Court by the Standing Committee on Attorney Discipline,

It is O R D E R E D that the Report and Recommendation of the Standing Committee on Attorney Discipline is approved and adopted and the application for reinstatement is denied. In accordance with Rule 12.3, Third Circuit Rules of Disciplinary Enforcement, no new petition for reinstatement may be filed within one (1) year following this adverse determination.

It is further O R D E R E D that this order and the Report and Recommendation will be disseminated and published in the Federal Appendix in the same fashion as an opinion of this Court that has not been selected for publication in the Federal Reporter. In accordance with Rule 11, Third Circuit Rules of Attorney Disciplinary Enforcement, the order and Report and Recommendation will also be sent to all courts before which Mr. Rodriguez has been admitted to practice and to the National Disciplinary Data Base, and will be maintained by the clerk as a public record as required by Rule 14.3, Third Circuit Rules of Attorney Disciplinary Enforcement.

For the Court,
/s/ Anthony J. Scirica
Chief Judge

Dated: December 10, 2008

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CA. Misc. Record No. 08-8037

In the Matter of: Isidoro Rodriguez, Esq.

REPORT AND RECOMMENDATION OF THE STANDING COMMITTEE ON ATTORNEY DISCIPLINE

BEFORE: GREENBERG, Chairperson and AMBRO and FISHER, Circuit Judges

This matter has come on before this Court, acting through its Standing Committee on Attorney Discipline (hereinafter called "Standing Committee" or "Committee"), at a hearing conducted in Philadelphia, Pennsylvania, on September 23, 2008, in the following circumstances. The petitioner, Isidoro Rodriguez, who has been a member of the bar of this Court since on or about January 9, 1994, having been admitted on the basis of his prior admission to the bar of the Commonwealth of Virginia, initiated these proceedings seeking reinstatement to the bar of this Court following his disbarment in this Court predicated on the revocation of his license to practice law in the Commonwealth of Virginia. So far as the Committee is aware, Rodriguez never had been the subject of any disciplinary proceedings before this Court prior to the proceedings resulting in his disbarment in this Court followed by his application for reinstatement leading to the hearing in this matter. It also should be noted that Rodriguez advised the Committee at the hearing that

he has not participated as an attorney in any case before this Court since the mid-1990s, an assertion which the records of this Court confirm.

The proceedings now before the Court in an immediate sense were initiated on November 28, 2006, when the Virginia State Bar Disciplinary Board, after a contested trial-type hearing at which witnesses testified and documents were considered, entered an order providing that Rodriguez's "license to practice law in the Commonwealth of Virginia is revoked, effective October 27, 2006." The license revocation is the equivalent of a disbarment as, unlike a suspension, by its terms a revocation is effective for an unlimited period. Such was the case here. The Committee notes that Virginia follows a disciplinary procedure in which the Disciplinary Board of the Virginia State Bar issues orders in disciplinary matters from which aggrieved parties may appeal to the Supreme Court of Virginia.

The Committee is supplying the 22-page order of the Virginia Disciplinary Board revoking Rodriguez's license with this Report and Recommendation. The order makes clear that the Disciplinary Board predicated its disbarment order on Rodriguez's conduct in two distinct matters, one a claim involving his representation of a corporation called Sea Search Armada in a commercial dispute and the other a child custody dispute involving his son. In view of the circumstance that these proceedings arise in a reciprocal disbarment situation we do not describe those two matters further. Following entry of the disbarment order Rodriguez appealed to the Supreme Court of Virginia, which on June 29, 2007, issued an

order affirming the Disciplinary Board's order of November 28, 2006. Rodriguez has attached a copy of the June 29, 2007 order to his brief in support of his application for reinstatement and thus the order is before this Court. Then on July 17, 2007, for the reasons that it had stated in its June 29, 2007 order the Supreme Court of Virginia again affirmed the order of the Disciplinary Board and in a separate order also entered on July 17, 2007, the court denied Rodriguez's motion to defer issuance of the mandate in the case. The Committee is supplying these orders with this Report and Recommendation. Though Rodriguez has challenged the Disciplinary Board's and the Supreme Court of Virginia's orders in various state and federal proceedings, and indeed does so in these proceedings as he regards them as null and void, no court ever has vacated, reversed, set aside, stayed, or in any other way issued an order impairing the effectiveness of the Virginia orders.

Rule 6.1 of the Third Circuit Rules of Attorney Disciplinary Enforcement (hereinafter called "Rule" or "Rules"), required Rodriguez to notify the Clerk of this Court of his license revocation within ten days and Rule 6.2 obliged the Clerk to refer all information received by her with respect to the revocation to this Committee. Though Rodriguez did not strictly comply with Rule 6.1, on December 14, 2006, he did comply substantially with the Rule by sending a letter referring to proceedings relating to his license revocation in the United States Court of Appeals for the Fourth Circuit. The letter indicated that "without either statutory authority or even authority under the Rules of the Virginia Supreme Court, but in instead

emboldened and motivated by 'Beltway' political cronyism. . . in retaliation and as punishment for: (a) my litigating against the Executive Branch since July 2001, to protect my rights as a father under Va Code, Treaty and Federal Statute; and (b) for my litigating to enforce and protect my perfected Virginia Attorney's Lien from a Business Conspiracy" "the Virginia State Bar Disciplinary System issued a void Summary and Memorandum Orders revoking my license to practice law in that jurisdiction as of October 27, 2006." The Committee is supplying a copy of that letter with this Report and Recommendation. It appears, however, that the clerk did not refer the December 14, 2006 letter to the Standing Committee and thus the Committee did not act on the matter at that time.

Under Rule 7, when another court disbars a member of the bar of this Court the disbarment is immediately and automatically effective in this Court and the Chairperson of the Standing Committee enters an order imposing the same discipline. However, under the Rule "failure to enter an order does not affect the effective date" of the disbarment. In this case, inasmuch as the Clerk did not refer the matter to the Standing Committee until 2008, by which time it had become clear that Rodriguez would contest his disbarment, the Chairperson has not entered an order disbarring Rodriguez. Nevertheless the Clerk correctly has advised Rodriguez that, in view of the Virginia proceedings, he is disbarred in this Court. It should be noted that inasmuch as Rodriguez has not appeared or sought to appear in this Court as an attorney since long before the Virginia disbarment proceedings, he has not practiced in this Court while disbarred.

Rodriguez now has filed an application for reinstatement as a member in good standing of the bar of this Court.[1] He entitles his brief as "Brief in Support of Reinstatement as a member in good standing of this Circuit Court's Bar and Opposition to summary imposition of identical discipline of the Virginia State bar based on the void order doctrine, the Rules Enabling Act and stare decisis of Selling, Theard, and Konigsberg."[2] The reference to the Rules Enabling Act is to 28 U.S.C. § 2072(b) and the references to the three cases are to Selling v. Radford, 243 U.S. 46, 37 S.Ct. 377 (1917), Theard v. United States, *354* U.S. 278, 77 S.Ct. 1274 (1957), and Konigsberg v. State Bar of California, *353* U.S. 252, 77 S.Ct. 722 (1957).

The materials before this Court consist of the following documents:

---

[1]The Committee is aware that Rule 12.2 provides that "[a]n attorney who has been disbarred may not apply for reinstatement until the expiration of five *(5)* years from the effective date of the disbarment." It notes, however, that under Rule 7.1 an automatic disbarment order is entered "without prejudice to the attorney moving before this Court for reinstatement." The Committee believes that in these circumstances the Court should entertain Rodriguez's application even though the Virginia revocation proceedings resulted in orders entered within the last five years.

[2] The Committee notes that even though Rodriguez has filed certain documents with this Court seeking relief beyond reinstatement to the bar of this Court, the Court is confined to considering this case as a reinstatement application because Rodriguez has not paid the $450 filing fee for a petition seeking broader relief than reinstatement. At the hearing he attributed his failure to pay the $450 fee to financial difficulties.

December 14, 2006 letter from Rodriguez to this Court;

May 20, 2008 letter from Rodriguez to this Court;

Rodriguez's opening brief in the Supreme Court of Virginia on his appeal;

Appellee's brief in the Supreme Court of Virginia on Rodriguez's appeal;

Rodriguez's reply brief in the Supreme Court of Virginia;

Appendix to Rodriguez's brief in the Supreme Court of Virginia, Volumes land 2;

Rodriguez's Petition for a Virginia Legislative Investigation, August 8, 2007;

Report of the Virginia State Disciplinary Board Order of Virginia State Disciplinary Board, November 28, 2006;

Order of the Virginia Supreme Court, July 17, 2007;

March 4, 2008 letter from Barbara J. Balogh of the Virginia State Bar;

June 18, 2008 letter from Rodriguez to Balogh;

May 28, 2008 letter from the clerk to Rodriguez;

June 18, 2008 letter from Rodriguez to this Court Requesting Reinstatement;

Rodriguez's Reinstatement Brief Received June 20, 2008;

July 11, 2008 clerk's letter to Rodriguez;

Order of the Virginia Supreme Court, June 29, 2007;

May 28, 2008, clerk's letter to Rodriguez;

Third Demand to Show Cause Hearing;

Order of the Supreme Court of Virginia dated July 17, 2007, denying Rodriguez's motion to stay issuance of the mandate; and

Rodriguez's September 14, 2008, petition for mandamus with covering letter to the Supreme Court of the United States.

It is apparent from the record that these reinstatement proceedings are part of a much larger picture in which Rodriguez has challenged his Virginia disbarment in various federal and state proceedings. The Committee, though not listing all of these proceedings in this Report and Recommendation, mentions two of them because it believes that it is not possible from the documents supplied to the Court to ascertain their disposition. The Committee nevertheless has become aware of their disposition, as Rodriguez advised the Committee of their status at the

hearing. In one matter Rodriguez filed a petition pursuant to the Virginia Constitution with the Virginia Legislature entitled "Petition by Isidoro Rodriguez, Esq., for Impeachment for Malfeasance" "to investigate the Supreme Court of Virginia, the Virginia State Bar, and the Office of the Attorney General, and to impeach each official guilty of for malfeasance in office for violation of the law of Virginia and Treaty." By "Treaty" Rodriguez was referring to the Hague Convention on the Civil Aspects of the International Child Abduction Act. In this regard he cited Cantor v. Cohen, 442 F.3d 196, 199 (4th Cir. 2006), in his petition. At the hearing before the Committee Rodriguez indicated that, at least to this time, he has not been successful with respect to his impeachment application and it has yielded no substantive results.[3]

In the other matter Rodriguez filed a petition for a writ of mandamus and prohibition pursuant to 18 U.S.C. § 4 and 3771 in the Supreme Court of the United States on or about September 14, 2008.[4] The Committee is supplying the Petition with this Report and Recommendation. Inasmuch as Rodriguez's letter dated September 14, 2008, to the Clerk of the Supreme Court explains the relief he sought by filing the petition, the Committee has quoted it in full:

---

[3]He also filed a second but similar petition with the Virginia Legislature entitled "Petition for Legislative Investigation and Impeachment for Malfeasance in Office." This petition has not yielded substantive results either.

[4]It does not appear that 18 U.S.C. §§ 4 and 3771 provide for the type of relief Rodriguez seeks.

Dear Mr. Suter:

The undersigned, a member of the bar of this Honorable Court, files forty copies of the Petition for Writ of Mandamus and Prohibition, with Appendix, to for [sic] the issuance of an order to compel Respondents The Hon. Chief Justice John G. Roberts in his capacity as Circuit Justice for the Fourth and D.C. Circuits; The Justice of the U.S. Court of Appeals for the Second, Third, Fourth, Tenth, Federal, and District of Columbia Circuits; The Judges of the U.S. District Court for the District of Columbia and the U.S. District Court for the Eastern District of Virginia, the U.S. Tax Court, the Attorney General of the United States, Department of Justice, United States Attorney for the Eastern District of Virginia, the United States Attorney for the District of Columbia, and the Solicitor General of the United States:

first, to immediate [sic] comply with 18 U.S.C. §§ 4 and 3771, so to protect me as a victim of [ ]on going federal crimes in violation of 18 U.S.C. §§ 241, 242, 1001, and 1513; and,

second, for the above federal courts to conduct an immediate impartial Show Cause Hearing.

Pursuant to 18 U.S.C. § 3771, the Writ of Mandamus and Prohibition must be issued or denied within 72 hours.

> Enclose are Certificate of Service, Certificate of Counsel, and a check for $300.00 for the filing fee.

It will be noted that in his covering letter Rodriguez told the Supreme Court that "the Writ of Mandamus and Prohibition must be issued or denied within 72 hours." In view of that unusual directive by a litigant to the Supreme Court and the circumstance that the 72-hour period had expired before the hearing, the Committee inquired of Rodriguez at the hearing of the status of his petition. He advised the Committee that the Court had not taken action on it, as the time for the Solicitor General of the United States to respond had not expired. Thus, at this time of the hearing, Rodriguez's Supreme Court petition still was pending.

In this Court Rodriguez makes the following contentions:

> 1. THE VIRGINIA STATE BAR AND SUPREME COURT OF VIRGINIA HAVE ISSUED VOID ORDERS REVOKING RODRIGUEZ'S LICENSE TO PRACTICE LAW.
>
> A. The Virginia State Bar's order is void because it has no jurisdiction or judicial authority as a Court of Record.
>
> B. The Virginia State Bar and Supreme Court of Virginia's orders are void because they violated the prohibition against their taking disciplinary action against an attorney for petitioning the government and litigating to

enforce his statutory rights.

2. THE RIGHT TO DUE PROCESS AND THE VOID ORDER DOCTRINE PROHIBITS GIVING FORCE AND EFFECT TO VOID ORDERS.

3. THIS COURT HAS A DUTY TO PROTECT RODRIGUEZ AS A VICTIM OF FEDERAL CRIMES BY THE ISSUANCE OF VOID ORDERS.

For reasons that we explain below, under well-established principles this Court should regard the Virginia proceedings as valid to the extent that they depend on issues of Virginia law. In light of our conclusion with respect to the effect of the Supreme Court of Virginia's determinations of Virginia law, we quote the issues Rodriguez raised in his brief in support of his appeal to the Virginia Supreme Court from the revocation order:

1. As to the First Assignment of Errors, the proceedings and orders of the VSB's Orders not valid and are void, for violating Art. VI, § 1 of the Va. Constitution.

2. As to the Second Assignment of Errors, the VSB's proceedings and orders are void under VA Code § 54.1-3935.

3. As to the Third Assignment of Error, the VSB's proceedings and orders violated VA Code § 54.1-39 *15,* because they are inconsistent with

Rodriguez's statutory rights.

4. As to the Fourth Assignment of Error, the VSB's orders violated Article I § 8 and § 11 of Va. Const., Va. Code § 54.1-39 15 and Va. Code § 8.01-336(A), and the 6th and 14th Amendments to the U.S. Constitution, and Va. Code § 54.1-39 15, when it denied Rodriguez's request for a jury trial before a court of competent jurisdiction.

5. As to the Fifth Assignment of Error, the VSB 's proceedings and orders violated Art. I § 8 and 11 of the Va. Const., the Rules of the Supreme Court of Virginia, and the 5th, 6th, and 14th Amendments to the U.S. Constitution, by denying Rodriguez's request for the issuance of witness summonses, witness subpoenas duce tecum, and to a full cross-examination of VSB's witnesses.

6. As to the Sixth Assignment of Error, the VSB's proceedings and orders violated Art. 1 § 8 of the Va. Const., the Rules of the Supreme Court of Virginia, and the 5th, and 14th amendment to the U.S. Constitution, by stigmatizing and punishing him for litigating to stop the obstruction with his parental rights to visitations under Va. Code § 20-146.25. and Art 21. of the Treaty; and for litigating to enforce and protect his business and profession, as well as his substantial property rights in his perfected attorney's lien, from a business conspiracy.

In his answering brief the Attorney General of Virginia on behalf of the Virginia State Bar made the following contentions:

1. The Board's proceedings and orders are not void and the Board did not violate Article VI, § 1 of the Virginia Constitution.

2. The Board's proceedings and orders are not void under Va. Code § 54.1-3935.

3. The Board's proceedings and orders did not violate Va. Code § 54.1-3915 because they are consistent with Rodriguez' statutory rights.

4. The Board properly denied Rodriguez' request for a jury trial.

5. Rodriguez' requests for the issuance of witness summonses and subpoenas duces tecum were properly denied and Rodriguez had an opportunity to cross-exam the Bar's witnesses.

6. The Board did not stigmatize or punish Rodriguez for litigating his parental and property rights.

The Supreme Court of Virginia on June 29, 2007, ruled as follows on Rodriguez's appeal:

> Upon an appeal of right from an order entered by the Virginia State Bar Disciplinary Board.

Upon consideration of the record, and arguments by appellant, in proper person, and by counsel for the appellee, the Court is of the opinion that there is no error in the order of the Virginia State Bar

Disciplinary Board (the "Board") revoking Isidoro Rodriguez's license to practice law in the Commonwealth of Virginia based upon finding that he violated Rules 1.2, *1.5,* 1.7, 1.16, 3.1, 3.4, 3.7, 4.4, 7.1, and 8.4 of the Virginia Rules of Professional Conduct.

> In reviewing the Board's decision in a disciplinary proceeding, we conduct an independent examination of the entire record. We consider the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the Bar~,] the prevailing party in the Board proceeding. We give the Board's factual findings substantial weight and view them as prima facie correct. While we do not give the Board's conclusions the weight of a jury verdict, we will sustain those conclusions unless it appears they are not justified by reasonable view of the evidence or are contrary to law. Barrett v. Virginia State Bar, 269 Va. 583, 587-88, 611 S.E.2d 375, 377 (2005) (quoting Williams v. Virginia State Bar, 261 Va. 258, 264, 542 S.E.2d 385, 389 (2001))(citations omitted); see also El-Amin v. Virginia State Bar, 257 Va. 608, 612, 514 S.E.2d 163, 165 (1999); Myers v. Virginia State Bar, 226 Va. 630, 632, 312 S.E.2d 286, 287 (1984).

In making its determination, the Board considered allegations that Rodriguez violated the Rules of Professional Conduct during litigation involving two sets of cases. One group of cases involved Rodriguez's relationship and work with Sea Search Armada. The other group involved custody litigation

regarding his son. The Virginia State Bar proved by clear and convincing evidence that Rodriguez violated Rules 1.2(a), *1.5(a),* 1.1 6(a)(3), 3.4(i), 7.1(a), and 8.4(b) and (c) in his relationship with and representation of Sea Search Armada, including his attempts to recover unpaid attorney's fees. The Virginia State Bar proved by clear and convincing evidence that Rodriguez violated Rules 1.7(b), 3.1, 3.4(d)(h)(i)(j), 3.7(a), 4.4, and 8.4.

We independently review each of the alleged rule violations and find no error in the Board's order. Accordingly, the order appealed from is affirmed. Appellant shall pay to the appellee thirty dollars damages.

Then on July 17, 2007, the Supreme Court entered the following order:

> Upon an appeal of right from an order entered by the Virginia State Bar Disciplinary Board.
>
> For the reasons stated in this Court's order dated June 29, 2007 and filed with the record, the Court is of [the] opinion that there is no error in the order appealed from. Accordingly, the order is affirmed. The appellant shall pay to the appellee thirty dollars damages.
>
> This order shall be certified to the Virginia State Bar Disciplinary Board.
>
> As we have indicated, it is clear that this

Court should regard the Virginia proceedings as valid under Virginia law. As we stated in State Farm Mutual Automobile Insurance Co. v. Coviello, 233 F.3d 710, 713 (3d Cir. 2000), "[w]hen ascertaining Pennsylvania law, the decisions of the Pennsylvania Supreme Court are, of course, the authoritative source." Though we ordinarily apply this principle with respect to the effect of state law in diversity of citizenship cases, this circumstance is traceable to the fact that usually state law becomes implicated in diversity cases. But we see no reason why it should not apply here as well.

We are well aware that the important circumstance that the Virginia proceedings are valid under Virginia law does not mean this Court cannot reinstate Rodriguez to practice in this Court. Indeed, it is clear that even in a reciprocal disciplinary proceeding arising following imposition of discipline in another court, a federal court has the power to determine who may be admitted to its bar. See In re Surrick, 338 F.3d 224, 230-31 (3d Cir. 2003). Certainly that principle applies with respect to an application for reinstatement. Moreover, we recognize that a state court disbarment proceeding will not be valid if it was entered without due process of law, was not predicated on sufficient evidence, or for some other reason should not be recognized. See Selling, 243 U.S. at *51*, 37 S.Ct. at 379. In this case, however, it is perfectly clear that the Virginia proceedings were valid as a matter of federal law and Rodriguez's contentions to the contrary are completely unmeritorious and require no discussion. In this regard, we observe that the Virginia Disciplinary Board entered its November 28, 2006 order following a hearing at which witnesses were

called and cross-examined and arguments were entertained. Thus, the Virginia proceedings were dissimilar to the reciprocal proceedings in this Court, as Rodriguez's disbarment in this Court was predicated on the undisputed fact that Virginia disbarment orders had been entered against him, a circumstance that did not have to be established at a hearing. Overall, inasmuch as it is clear that Rodriguez's disbarment in Virginia is unassailable so far as our Court is concerned.

Notwithstanding the circumstance that Rodriguez has been validly disbarred in Virginia and in this Court by the terms of Rule 7.1, we reiterate that there is no doubt that this Court is empowered to reinstate him. But the Committee sees no reason why this Court should do so. Indeed, his comprehensive brief in this Court in support of his application for reinstatement rests entirely on his claim that the Virginia order is void, a position the Committee may not accept. In order that there be no misunderstanding with respect to his argument in his brief, we quote his summary of his argument in full:

> This Court in the interest of justice, compliance with the Rule of Law, and duty to assure due process, cannot declare Rodriguez ineligible to practice for the following reasons:
>
> First, based on the void order or judgment doctrine Rodriguez has been denied of his right to due process as mandated of Selling v. Radford, 243 U.S. 46, 49-5 1 (1917), Theard v. United States, 354 U.S. 278, 282 (1957) and, Konigsberg

v. State Bar, 353 U.S. 252, 273 (1957). The evidence and law confirm: (a) that the Virginia Supreme Court has acted outside of their judicial capacity and jurisdiction by granting under its Rules greater authority to the Virginia State Bar to act beyond being only an administrative arm of the Supreme Court of Virginia as the General Assembly mandated pursuant to Va. Code §§ 54.1-3909, 54.1-39 10; and, (b) that through the promulgation of the Supreme Court of Virginia Rules they have intentionally violated the mandate of separation of power under Article VI § 1, § 5 and § 7 of the Constitution of Virginia (Add-b), and usurped the judicial authority granted only to courts of record by the General Assembly so to permit the Virginia State Bar to revoke a Virginia attorney's license in violation of Va. Code § 54.1-3935 (Add-f);

Second, the evidence confirms that Virginia State Bar and the Supreme Court of Virginia have issued a void order violating Va. Code §54.1-3915 (Add-e), by punishing Rodriguez for petitioning the General Assembly and Congress for an investigation of the Courts of Virginia (Respondent's Exhibit 2c and 2d) (hereinafter cites as "Ex-"), and litigating to enforce his statutory rights as a parent pursuant to Art. 21 of the Hague Convention on the Civil Aspects of International Child Abduction, Oct 25, 1980, T.I.A.S. No. 11670, 19 I.L.M 1501 (Add-a) ("the Treaty"), and the Virginia's Uniform Child Custody Jurisdiction and Enforcement Act, Va. Code 20-146.25 (Add-e) ("Va UCCJEA") (See

Cantor v. Cohen, 442 F.3d. 196 (March 21, 2006); 2006 U.S. App. LEXIS 6915). Thus based on the Rules Enabling Act, 28 U.S.C. § 2072(b), this Court cannot by its Rules deprive Rodriguez of his substantive right protected by the United States Constitution and federal statute; and,

Third, the Court has a Congressionally mandated duty pursuant to 18 U.S.C. § 3771, to protect Rodriguez as a victim of ongoing federal crimes (Ex- 2a, 2b, 2c, 2d, and 2e), by the issuance of void orders as part of a criminal enterprise to injure, punish, and stigmatize Rodriguez in retaliation of his petitioning Congress and the General Assembly and for litigating against the obstruction of his parental rights in violation of Treaty and Va. UCCJEA, and for litigating to enforce his perfected Virginia Attorney's Lien, all in violation of 18 U.S.C. § 4 (federal crime reporting statute), 18 U.S.C. § 241 and 242, (conspiracy in retaliation for exercising federal rights), § 1001 (making false statements of Congress), § 1204 (obstruction of parental rights), § 1510, § 1511 (obstructing the enforcement of state law), § 1513 (retaliating against a victim), and 5 U.S.C. § 702 (failure to do official acts, i.e., enjoining perjury and malfeasance).

Usually reinstatement applications do not challenge the initial disbarment or suspension. Rather, to satisfy the requirements of Rule 12.4 dealing with reinstatements, an applicant attempts to demonstrate by clear and convincing evidence that he or she has the

moral qualifications, competency, and learning in the law required for admission to practice before this Court and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest. But Rodriguez has eschewed that approach and argues only that his license to practice law should not have been revoked in Virginia and thus he should not have been disbarred in this Court. But clearly the Virginia disbarment is unassailable by our Court and thus the disbarment in this Court is valid, and inasmuch as Rodriguez has not made any effort to make a showing to satisfy the requirements of Rule 12.4, he has not met his burden of proof under that Rule.

In view of the aforesaid, the Committee recommends to this Court that it deny Rodriguez's application for reinstatement.

Respectfully submitted,

/s/ Morton I. Greenberg
Circuit Judge

/s/ Thomas L. Ambro
Circuit Judge

/s/ D. Michael Fisher
Circuit Judge

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
MARCIA M. WALDRON
CLERK
TELEPHONE *215-597-2995*
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106-1790

May 28, 2008

Barbara J. Balogh, Esquire
Assistant Ethics Counsel
Virginia State Bar
Standing Committee on Unauthorized Practice of Law
Eighth & Main Building
707 East Main Street, Suite 1500
Richmond, VA 23219-2800

Re: Isidoro Rodriguez Third Circuit Misc. No. 08-8037

Dear Ms. Balogh:

Thank you for your letter of March 4, 2008.

In accordance with Rule 7.1, Third Circuit Rules of Attorney Disciplinary Enforcement, once the license to practice law of Mr. Rodriguez was revoked by Virginia, that action was, "immediately and automatically effective in this Court." That rule also provides that the, "failure to enter an order does not affect the effective date of the suspension or disbarment." Accordingly, Mr. Rodriguez was disbarred by this Court when the Virginia Supreme Court affirmed the revocation of his license on July 17, 2007.

We have received a submission from Mr. Rodriguez dated May 20, 2008. The cover letter accompanying the submission is on letterhead which indicates that he is a member in good standing of this Court's bar. That statement is incorrect in light of Rule 7.1, Third Circuit Rules of Attorney Disciplinary Enforcement.

If you have a copy of a July 17, 2008 order of the Virginia Supreme Court, we would appreciate receiving a copy so that our records are complete. A copy of the correspondence dated May 20, 2008 from Mr. Rodriguez in which he indicates that he is a member "in good standing" of this Court's bar is enclosed for your information.

Very truly yours,

Marcia M. Waldron, Clerk

By: /s/Bradford A. Baldus
Bradford A. Baldus
Senior Legal Advisor to the Clerk

Enclosure
cc: Isidoro Rodriguez, Esquire (w/out enclosure)

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
MARCIA M. WALDRON
CLERK
TELEPHONE *215-597-2995*
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106-1790

May 28, 2008

Isidoro Rodriguez, Esquire
7924 Peyton Forest Trail
Annandale, VA 22003-1560

In re Rodriguez
3rd Cir. No. 08-8037

Dear Mr. Rodriguez:

We are in receipt of your submission dated May 20, 2008. Insofar as you have been automatically disbarred by this Court, your submission, to the extent that it directly challenges the Virginia revocation of your license to practice law, will be submitted to this Court's Standing Committee on Attorney Discipline as a request for reinstatement to this Court's bar. Rule 7.1, Third Circuit Rules of Attorney Disciplinary Enforcement. The Standing Committee will determine whether your submission is effective for that purpose.

Before your submission entitled, "As a Member of the Bar in Good Standing a Request for Show Cause Hearing and Protection under 18 U.S.C. § 3771(a), Crime Victim Rights," may be submitted to the Court's Standing Committee on Attorney Discipline, you must submit three additional (and identical) copies of that

document and the exhibits to your submission. You must also file a formal certification that a copy of the request for reinstatement and exhibits have been served on Ms. Balogh.

If the submission is intended to seek relief beyond reinstatement to the bar of this Court, you must pay the $450.00 fee required for filing an extraordinary writ, serve the Virginia Supreme Court With a copy of the papers and submit and serve a statement as to why this Court would have jurisdiction to consider such a petition. In the event that this is your intention, your submission will not be submitted to the Standing Committee on Attorney Discipline and will not be considered in regard to your disbarment by this Court. It appears that the issue of your entitlement to the protections of 18 U.S.C. § 3771 has previously been decided by the Fourth Circuit Court of Appeals in that Court's docket No. 08-1444.

Very truly yours,

Marcia M. Waldron, Clerk

By: /s/Bradford A. Baldus
Bradford A. Baldus
Senior Legal Advisor to the Clerk

cc: Barbara J. Balogh, Esquire

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 29th *day of* June, 2007.

Isidoro Rodriguez, Esq.

Appellant,

v. Record No. 070283, VSB Docket Nos. 04-052-0794, And 04-052-1044

Virginia State Bar,

Appellee.

Upon an appeal of right from an order entered by the Virginia State Bar Disciplinary Board.

Upon consideration of the record, briefs, and arguments by appellant, in proper person, and by counsel for the appellee, the Court is of the opinion that there is no error in the order of the Virginia State Bar Disciplinary Board (the "Board") revoking Isidoro Rodriguez's license to practice law in the Commonwealth of Virginia based upon finding that he violated Rules 1.2, 1.5, 1.7, 1.16, 3.1, 3.4, 3.7, 4.4, 7.1 and 8.4 of the Virginia Rules of Professional Conduct.

> In reviewing the Board's decision in a disciplinary proceeding, we conduct an independent examination of the entire record. We consider the evidence and all reasonable inferences that may be drawn form the evidence in the light most favorable to the Bar the prevailing party in the Board proceeding. We give the Board's factual finding substantial weight and view them as prima facie correct. While we do not give the Board's conclusions the weight of a jury verdict, we will sustain those conclusions unless it appears they are not

justified by reasonable view of the evidence or are contrary to law. Barrett v. Virginia State Bar, 269 Va. 583, 587-88, 611 S.E.2d 375, 377 (2005) (quoting Williams v. Virginia State Bar, 261 Va. 258, 264, 542 S.E.2d 385, 389 (2001) (citations omitted); see also El-Amin v. Virginia State Bar, 257 Va. 608 612, 514 S.e.2d 163, 165 (1999); Myers v. Virginia State Bar, 226 Va. 630, 632, 312 S.E.2d 286, 287 (1984).

In making its determination, the Board considered allegations that Rodriguez violated the Rules of Professional Conduct during litigation involving two sets of cases. One group of cases involving Rodriguez's relationship and work with Sea Search Armada. The other group involved custody litigation regarding his son. The Virginia State Bar proved by clear and convincing evidence that Rodriguez violated Rules 1.2(a), 1.5(a), 1.16(a)(3), 3.4(I), 7.1(a), and 8.4(b) and (c) in his relationship with and representation of Sea Search Armada, including his attempts to recover unpaid attorney's fees. The Virginia State Bar proved by clear and convincing evidence that Rodriguez violated Rules1.7(b), 3.1, 3.4(d)(h)(i)(j), 3.7(a), 4.4, and 8.4.

We independently review each of the alleged Rule violations and find no error in the Board's order. Accordingly, the order appealed from is affirmed.

Appellant shall pay to the appellee thirty dollars damages.

This order shall be certified to the Virginia State Bar Disciplinary Board.

A Copy,Teste: /S/Patricia L. Hanninton, Clerk

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF ISIDORO RODRIGUEZ
VSB DOCKET NOS. 04-052-0794 and 04-052-1044

ORDER OF VIRGINIA STATE BAR DISCIPLINARY BOARD

THIS MATTER came on to be heard on the 26th and 27th days of October, 2006, before a panel of the Disciplinary Board consisting of James L Banks, Jr., 1st Vice-Chair, presiding,(the "Chair"), William C. Boyce Jr, Glenn M. Hodge, William F. (Hover, and Stephen A. Wannall, Lay member. The Virginia State Bar ("VSB" or "Bar") was represented by Noel D. Sengel, Senior Assistant Bar Counsel. The Respondent, Isidro Rodriguez, appeared in person and represented himself. The Chair polled the members of the Board Panel as to whether any of them was aware of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member; including the Chair, responded in the negative. Donna T. Chandler, RPR, RMR, CCR of Chandler & Ralasz, court reporter. P.O. Box 9349, Richmond, Virginia, 23227, (804-730-1222) after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board on the Subcommittee Determination (Corrected Certification) by the Fifth District Committee

Section II.

At the beginning of the proceedings the Respondent renewed his motion for the members of the panel to disqualify themselves as being interested patties for the reasons stated in his written motion previously filed. Upon consideration of this motion it was denied by the Panel for the reasons previously stated in the Board's Order of August 8,2006 that originally addressed Respondent's Motion to Recuse and Disqualify Members of the Disciplinary Board Within the Jurisdiction of N. Virginia and the U.S. Dist. Ct. for the RD. of Va. so to Assure Impartiality.

FINDINGS OF FACT

VSB Exhibits 1-92 were admitted during the course of the hearing without objection. The Respondent's Exhibits 1-42 were admitted during the course of the hearing without objection or over Bar counsel's objection. The VSB presented evidence through its witnesses, the Respondent cross-examined the witnesses and thereafter testified on his own behalf. After consideration of the exhibits and the testimony the Board makes the following findings of fact on the basis of clear and convincing evidence:

VSBNo. 04-052-0794

1. At all times relevant hereto, Isidoro Rodriguez, hereinafter the "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record

with the Virginia State Bar has been 7924 Peyton Forest Trail, Annandale, VA 22003-1560. VSB Ex. 1. The Respondent received paper notice of this proceeding as required by Part Six, IV, 13 (E) and (I)(a) of the Rules of Virginia Supreme Court. VSB Ex. 2.

2. The Complainant, Jack Harbeston, hereinafter referred to as "Harbeston", was the managing director of Sea Search Armada ("SSA") a Cayman Island entity that invests in and conducts searches for sunken treasure ships and engages in the salvage and the recovery of their contents. Sometime prior to 1988 SSA had discovered what it thought to be the remains of sunken Spanish ships off the coast of Colombia. SSA had been unable to have its rights to any sunken treasure recognized by the government of Columbia and was looking for legal representation in Colombia to assert its claims. Harbeston sought assistance from the Economic Officer at the United States Embassy in Bogota, Colombia for names of attorneys who could represent SSA The Economic Officer provided Harbeston with a list of attorneys in Colombia which included the Respondent as a member of the partnership of Devis and Rodriguez. Harbeston subsequently contacted the Respondent regarding possible legal representation. In his conversation with the Respondent, Harbeston learned that Devis, a Colombian attorney, would handle any litigation on behalf of SSA in the Colombian courts. Harbeston was looking for an American attorney, if possible, because of his concerns as to the potentially divided loyalty of a Colombian attorney. In correspondence between the Respondent and

Harbeston, Respondent noted that he was the only attorney licensed in the United States working in Colombia and as such his firm was subject to the same standards as law firm in the United States; that unlike any other firm in Colombia his firm "must comply with the State of Virginia Bar Association's Ethics of Professional Responsibility." VSB Ex. 4.

3. SSA subsequently hired the firm of Devis and Rodriguez. By agreement dated October 20, 1988, the parties entered into a representation agreement prepared by Rodriguez which set forth the terms of the engagement including a fee arrangement on an hourly basis that had been discussed prior to the execution of the agreement. VSB Ex. 7. By affidavit dated October 21, 1988, Harbeston, as managing Director of SSA, authorized the law firm of Devis and Rodriguez to act as SSA's legal representative to pursue its claims in Colombia.

4. In order for SSA to proceed with its claims in Colombia, SSA was required to appoint an agent with broad powers to represent SSA. By agreement dated December 16, 1988, executed in the District of Columbia, SSA appointed the Respondent as its legal representative in Colombia. Respondent's Ex. 8. However, Harbeston and SSA were concerned with the scope of the general power of attorney appointing Rodriguez as its agent in Colombia (Respondent's Ex. 8) and sought to limit his authority by advising the Respondent that he could only act upon the written authorization of Harbeston. By letter dated December 14, 1988, the Respondent acknowledged this limitation on his

authority, noting that any violation of the restriction "will result in an action before The Virginia Bar Ethics Committee". VSB Ex. 9. By memorandum dated December 13, 1988, Harbeston advised all law firms employed by 58.4, including Devis and Rodriguez, that John Erlichman would coordinate and manage all litigation by SSA. VSB Ex. 8.

5. By letter dated January10, 1989 SSA authorized Respondent as its legal representative in Colombia to file a lawsuit against the Republic of Colombia to confirm its rights to the sunken ships. VSB Ex. 12. Thereafter, Devis proceeded to pursue SSA's claims in the courts of Colombia with apparent skill and professionalism to the satisfaction of SSA. Harbeston soon became dissatisfied with the Respondent's performance because of actions he took without written authorization but nevertheless continued the representation arrangement because of his satisfaction with Devis' performance as a litigator. By memorandum to Respondent dated June 9, 1989, (VSB Ex. 13) Harbeston reaffirmed that Respondent was to take no action on behalf of SSA without Harbeston's written authorization as Respondent had acknowledged by his December 14,1988 letter. Sometime thereafter, but prior to January 1990, the law firm of Rodriguez and Devis had dissolved but Devis continued to represent SSA in its ongoing litigation against the Republic of Colombia. By agreement dated January 3, 1991, Respondent, acting as attorney for SSA, entered into a professional services agreement with Devis to continue with the litigation on behalf of SSA

against the Republic of Colombia. This agreement changed the fee arrangement to a contingency fee arrangement whereby Devis would receive 20% of any recovery. VSB Ex. 14. Devis and the Respondent then entered into an agreement to share any contingent fee recovery.

6. By request dated January 3, 1990, the Respondent sought a legal ethics opinion from the VSB that as a Virginia attorney who had entered into a contract in Idaho to be performed in a foreign country, whether he could terminate his representation because the client had failed to pay his fee and could sue the client to collect such a fee. The VSB Ethics Committee gave its opinion on the issue (LEO 1325) that under the facts presented, the Respondent could terminate his representation and sue the client for fees, with the opinion concluding with the customary notice that it was an advisory opinion and not binding on any court. VSB Ex. 18.

7. Devis continued the litigation successfully as the case made its way through the Colombian judicial system as the Colombian government appealed each adverse decision. Respondent does not appear to have played any role in the litigation. By letter dated March 24,2000 Devis advised Respondent not to use his name in Respondent's professional activities, and that Harbeston was upset with Respondent's activities and wanted to revoke the power of attorney. VSB Ex. 15. Devis acknowledged he would honor their contingent fee sharing arrangement By letter dated April 6,2000, Harbeston revoked the general power of attorney from SSA to Respondent (which he had forgotten to do earlier), stating that neither SSA nor its related

entities owed Respondent any legal fees and that any understanding relating to fees was in the agreement between Devis and Respondent to share any contingency fee. VSB Ex. 16.

8. In September of 2000 the Respondent filed suit against SSA in the United States District Court for the Eastern District of Virginia seeking to enforce a claim for attorney's fees in the amount of $4.5 million against SSA. VSB Ex. 19, The Respondent testified that he based the amount of his attorney's fee claim on the annual salary ($300,000 to $400,000) of a legal representative of a United States company in a foreign land for a period of 12 years. Included as defendants in this litigation were Harbeston, related entities to SSA and Devis. None of the defendants were residents of the Commonwealth of Virginia. The Respondent basis for jurisdiction by the federal court in Virginia was the fact that he was a Virginia attorney, Virginia Code Section 54.1-3932 grants an attorney a lien for fees and LEO 1325 which said he could sue his client. The defendants in this litigation obtained the services of Harrison Pledger, a Virginia attorney, who filed a motion to dismiss based on the lack of personal jurisdiction over the defendants. This motion was granted and the suit was dismissed. The Respondent then appealed to the Fourth Circuit Court of Appeals and that court affirmed the District Court's ruling. The Respondent then petitioned for a Writ of *Certiorari* in the United States Supreme Court but that petition was denied.

9. After the denial of The Writ of Certiorari by the United States Supreme Court the

Respondent filed a slightly different law suit in the United States District Court for the Eastern District of Virginia against the defendants in the earlier suit and also added several other defendants who were investors in SSA or related entities. VSB Ex. 20. The District Court dismissed this second law suit, finding that the Respondent had failed to plead additional facts to the first suit to give the court personal jurisdiction over any of the defendants. This ruling was affirmed on appeal to the Fourth Circuit The Respondent then sought a Writ of *Certiorari* from the United States Supreme Court which was also denied.

10. While the appeal of the second lawsuit was pending, the Respondent filed a third similar lawsuit - this time in the Circuit Court of Fairfax County against SSA. In this third lawsuit the Respondent named the defendants in the second law suit and Harrison Pledger and his law firm as defendants. VSB Ex. 21. This law suit was also dismissed but the court denied the defendants' motions for sanctions.

11. The Respondent created a website which displayed false and misleading information regarding his relationship with SSA and his participation in the litigation in Colombia. VSB Ex 24 & 25. On the site, the Respondent claimed that in 1988, at the request of the United States Department of State, he became SSA's legal representative and managing attorney responsible for managing alternative dispute resolution negotiations and outside counsel in litigation against the government of Colombia, posts he claims he held until 2000. These assertions are not true. On

his resume, the Respondent listed a LLM Civil law degree from the University of Bordeaux. While the Respondent attended a class at the University of Bordeaux, he never received a degree from that university. The Respondent also listed an American Trial Lawyers Ultimate Trial Lawyer Certification. There is no such certification. The basis for Respondent's claim is the fact that he attended a one week continuing legal education program sponsored byte Association of Trial Lawyers of American titled "Ultimate Trial Advocacy".

12. Respondent, in 2004,while communicating with the U.S. State Department regarding Freedom of Information Act ("FOIA") requests he had made for information relating to SSA litigation, represented that he was the attorney for SSA notwithstanding the fact that Harbeston had revoked his authority in 2000. VSB Ex. 23. Respondent claimed that since the power of attorney filed with the Colombian government had never been terminated he was not making a misrepresentation in his FOIA request.

VSB Docket No. 04-502-1044

1. The Respondent lived for many years in Colombia and had married Amalin Hazbun Escaf a citizen of Colombia. One son was born of the marriage. The marriage ultimately ended in a divorce in Colombia with the wife/mother obtaining custody of the son by order of a Colombian court with visitation rights to the Respondent.

2. The Respondent subsequently returned to the United States where he has been living and his

son visited him pursuant to the visitation rights granted by the Colombian Court. In 2001 while the son was visiting the Respondent the Respondent refused to return his son to Colombia and filed an action in the Juvenile and Domestic Relations Court in Fairfax County to gain custody of his son.

3. In 2001, subsequent to the filing of Respondent's suit in the Juvenile and Domestic Relations Court in Fairfax County, Respondent's ex-wife filed an action in the United States District Court for the Eastern District of Virginia, under the Hague Convention on the Civil Aspects of Child Abduction (the "Hague Convention") and the International Child Abduction Remedies Act ("ICARA") in order to secure the return to Colombia of her son. VSB Ex. 34. In this litigation she was represented by Patrick Stiehm, a Virginia attorney who had undertaken this representation *pro bono* at the request of the National Center for Missing and Exploited Children ("NCMEC"). NCMEC is a non profit corporation that acts as a neutral in facilitating the processing of claims under the Hague Convention and ICARA. When Stiehm initially contacted Respondent to
inform him of the pending litigation, Respondent told Stiehm that his *pro bono* representation would cost Stiehn "a big chunk of change." In keeping with this threat, Respondent immediately filed a motion for sanctions against Stiehn (VSB Ex. 35) but that motion was denied. VSB Ex. 38. However, Respondent's subsequent litigation described herein, which included Stiehm as a defendant, resulted in Stiehm incurring significant legal expenses to respond to meritless and vexatious litigation.. After

a bench trial the Court ruled that the Respondent had kept the child in Virginia in violation of his ex-wife's custody rights. VSB Ex. 39. The Court ordered that the child be removed from the Respondent's custody and returned to the child's mother in Colombia The Respondent's appeals to the Fourth Circuit Court of Appeals and the United States Supreme Court were denied. After all appeals and stays were denied the son was reunited with his mother and left for Colombia in June of 2002.

4. In January of 2003, the Respondent filed suit in the District Court for the District of Columbia against numerous defendants, including NCMEC, several employees of NCMEC, the United States District Court for the Eastern District of Virginia, the Fourth Circuit Court of Appeals, the Circuit Court of Fairfax County, the Court of Appeals of Virginia, the District Court for the District of Columbia, the United States Court of Appeals for the District of Columbia, various judges, a court clerk, the United States Department of State, Patrick Stiehm and Stephen Cullen (an attorney who had assisted Stiehm in the Virginia litigation) claiming a constitutional conspiracy by the defendants against him in his litigation in Virginia. VSB Ex. 43. Staff members of NCMEC had been witnesses in the Virginia litigation and NCMEC had provided legal representation to witnesses in the litigation in Virginia. In filing this litigation in which Respondent and his son were named as plaintiffs, Respondent who is not licensed to practice in the District of Columbia and had not obtained an order to appear *pro hoc vice*, attempted

to act as attorney for his son.

5. In March of 2003, the Respondent filed a Writ of Mandamus in an attempt to compel NCMEC to take actions to force the country of Colombia to grant the Respondent access to his son. VSB Ex. 64. By letter dated September 24,2003, Warren L. Dennis, Esquire, counsel for NCMEC, informed the Clerk of the United States Supreme Court that NCMEC would not be filing a responsive brief to the Respondent's Writ because, inter alia, it had no power to compel the government of the country of Colombia to do anything. VSB Ex. 65. Upon receipt of a copy of the letter, the Respondent called Mr. Dennis's office and left a voice mail message in which he threatened to file an ethics complaint because the letter falsely characterized the Respondent's Virginia litigation. Also, by letter dated September 29,2003, the Respondent gave notice of his intent to file a judicial complaint and District of Columbia Bar complaint against those involved in the litigation unless facts already proved were proved within twenty-four (24) hours. VSB Ex 67.

6. In the District of Columbia litigation the Respondent repeatedly filed pleadings with no basis in law or fact. VSB Ex. 43 - 81. In an amended complaint (VSB Ex. 72) Respondent asserted a claim under the Racketeer Influenced and Corrupt Organization Act (RICO) 18 U.S.C. 1961. Included as defendants in the complaint were the United States Supreme Court; the United States Court of Appeals for the Fourth Circuit; the United States Court of Appeals for the District of Columbia, the United States District Court for the Eastern District

of Virginia, the United States District Court for the District of Columbia, the Virginia Supreme Court, the Court of Appeals of Virginia and the Circuit Court of Fairfax County. Respondent's actions in the D.C. litigation clearly demonstrates his use of the legal system to harass and intimidate anyone whom he considered to have been involved in the Virginia litigation that returned his son to Colombia and to re-litigate the Virginia case.

7. Respondent's actions in naming NCMEC and some of its employees as defendants in this litigation cost NCMEC over $160,000 in legal expenses and nearly bankrupted the organization. Throughout the course of this litigation, the Respondent misrepresented his credentials as a lawyer and his license status in the District of Columbia and New York to the courts and opposing parties. The Respondent graduated from law school in 1976. He was first licensed to practice law in the Commonwealth of Virginia in 1982. Virginia is the only jurisdiction in which Respondent has a license to practice law. The Respondent listed a number of governmental and quasi governmental legal jobs in the District of Columbia on his resume between the years 1976 and 1982 requiring a valid law license in the United States, during which period he was not licensed to practice law anywhere in the United States. The Respondent also noted on various documents that he practiced law in the District of Columbia for a period of time after his licensure in Virginia, but has never been licensed in the District of Columbia.

8. During this litigation, the Respondent filed pleadings and attempted to represent his minor son

on several occasions in the District of Columbia litigation, despite the fact there was a conflict of interest between the father and son, despite the fact that the Respondent would be a witness in the case and despite the fact that the judge instructed the Respondent to cease representing his son. VSB Ex 48 & 50. The Respondent's law partner also attempted to represent the son but the court refused to permit that representation.

I. MISCONDUCT

The Certification for VSB Docket No. 04-052-0794 charges violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill

requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer,

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

RULE 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or where representation has commenced, shall withdraw from the representation of a client if:

(3) the lawyer is discharged.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(I) file a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 7.1 Communications And Advertising Concerning A Lawyer's Services

(a)A lawyer shall not, on behalf of the lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. For example, a communication or advertisement violates this Rule if it:

(1) contains misleading fee information;

(2) states or implies that the outcome of a particular legal matter was not or will not be related to its facts or merits;

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

(4) contains an endorsement by a celebrity or public figure who is not a client of the firm without disclosure (I) of the fact that the speaker is not a client of the lawyer or the firm, and (ii) whether the speaker is being paid for the appearance or endorsement; or

(5) contains a portrayal of a client by a non-client without a disclosure that the depiction is a dramatization.

In the determination of whether a communication or advertisement violates this Rule, the communication or advertisement shall be considered in its entirety including any qualifying statements or disclaimers contained therein.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in professional conduct involving

dishonesty, fraud, deceit or misrepresentation;

The Certification for VSB Docket No. 04-052-1044 charges violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.7 Conflict of Interest: General Rule

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by
the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

RULE 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could
result in incarceration may nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly
(1) make a false statement of fact or law to a tribunal;
(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, subject to Rule 1.6;
(3) fail to disclose to the tribunal controlling legal authority in the subject jurisdiction known to the lawyer to be adverse to the position of the client and not disclosed by opposing counsel; or
(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity; the lawyer shall take reasonable remedial measures.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:
(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.
(h) Present or threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.
(I) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trail, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another. Effective January 1,2004
(j) Present or threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter,

(k) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trail, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 3.7 Lawyer As Witness

(a) A lawyer shall not act as an advocate in an adversarial proceeding in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

RULE 44 Respect For Rights Of Third Persons

In representing a client, a lawyer shall not use means that have no purpose other than to embarrass, delay; or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

RULE 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

RULE 7.1. Communications Concerning A Lawyer's Services

(a) A lawyer shall not, on behalf of the

lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. For example, a communication violates this Rule if it:

(1) contains false or misleading fee information; or

(2) states or implies that the outcome of a particular legal matter was not OR will not be related to its facts or merits; or

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

(4) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law.

RULE 7.4 Communication Of Fields Of Practice And Certification

Lawyers may state, announce or hold themselves out as limiting their practice in a particular area or field of law so long as the communication of such limitation of practice is in accordance with the standards of this Rule, Rule 7.1, and Rule 7.3, as appropriate. A lawyer shall not state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law except as follows:

(a) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;

(b) A lawyer engaged in Admiralty practice may use as a designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation;

(c) A lawyer who has been certified by the Supreme Court of Virginia as a specialist in some capacity may use the designation of being so certified, e.g., "certified mediator" or a substantially similar designation;

(d) A lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization, provided that the communication clearly states that there is no procedure in the Commonwealth of Virginia for approving certifying organizations. Effective Nov. 1,2002

(a) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;

(b) A lawyer engaged in Admiralty practice may use as a designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation;

(c) A lawyer who has been certified by the Supreme Court of Virginia as a specialist in some capacity may use the designation of being so certified, e.g., "certified mediator" or a substantially similar designation;

(d) A lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization, provided that the communication clearly states that there is no procedure in the Commonwealth of Virginia for approving certifying organizations.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:
(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;
(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation; Effective Mar. 25, 2003
(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law.
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

III. DISPOSITION

Upon review of the forgoing finding of facts, the exhibits presented by Bar Counsel on behalf of the VSB as Exhibits 1- 92, the exhibits presented by the Respondent as The Respondent's Exhibits 1-42, the evidence from witnesses presented on behalf of the VSB and evidence presented by the Respondent in the form of his own
testimony, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After deliberation the Board reconvened and stated that it had found by clear and convincing evidence that the Respondent had violated The following Rules of Professional Conduct: in Docket No. 04-052-0794, Rule 1.2(a); 1.5(a); 1.16(a)(3); 3.4(I); 7.1(a); 8.4(b) & ©); in Docket No. 04-052-1044. Rule 1.7(b) 1-2; 3.1; 3.4 (d)(h)(i)(j); 3.7(a)(1-3); 4.4 and 8(b) and (c).

The Board stated that the Bar had failed to

prove by clear and convincing evidence any violation of the following the Rules of Professional Conduct: 3.3(a)1-4; 5.5(a)1-2; 7.1(a)1-4; 7.4(a)(b)(c)(d); and effective Nov. 1, 2002 7.4(a)(b)(c)(d).

The bases for the Boards finding of violation of the Rules of Professional Conduct are as follows:

VSB Docket No. 04-052-0794

(a) The Respondent violated Rule 1.2(a) (Scope of Representation) in that his authorization to act on behalf of his client SSA was limited, but he nonetheless acted without written authorization from his client. Furthermore, after he had been discharged by SSA, he wrote the Department of State claiming to be the managing attorney of SSA, which was not the case. He also made a FOIA request without any authorization.

(b) The Respondent violated Rule 1.5(a) 1-8 (Fees) with his claim of a fee of 4.5 million dollars. Respondent acknowledged that the fee arrangement was a contingent fee arrangement and no recovery had been made. Therefore, there was no basis to claim a fee. Furthermore, the amount of the fee, $4.5 million, does not appear to have any reasonable relationship to work actually performed which is necessary for a recovery on a quantum merit basis. Respondent testified that he determined the amount based upon what the salary would be for a legal representative for a U.S. company operating in a foreign country.

(c) The Respondent violated Rule 1.16 (a)(3) (Declining or Terminating Representation) by representing that he was SSA's managing attorney

in a FOIA request (VSB Ex. 23), which he made well after SSA had terminated their relationship.

(d) The Respondent violated Rule 3.4(I) (Fairness to Opposing Party and Counsel) by tiling the litigation in the United States District Court for the Eastern District of Virginia and the Circuit Court of Fairfax County, Virginia. It should appear to any reasonably competent lawyer that the courts did not have jurisdiction over the parties named as defendants. Even giving the Respondent the benefit of the doubt as to the first suit, he received a ruling that the court lacked personal jurisdiction over the defendants which was upheld on appeal. He nonetheless filed a second suit with the same infirmity seeking the same recovery. Furthermore, his suit in the Circuit Court of Fairfax County, Virginia, included as a defendant Harrison Pledger and his law firm, merely because Mr. Pledger had acted as defense counsel in the two suits in the federal court

(e) The Respondent violated Rule 7.1(a) 1·5 (Communication Concerning a Lawyer's Services) by misrepresentation on his website and resume. VSB Exhibits 24 and 25 show that Mr. Rodriguez, on the website he created, misrepresented his relationship with SSA. He misrepresented what he did for SSA and how he became employed by SSA. He misrepresented his education by listing an LLM civil law degree from the University of Bordeaux. He improperly claimed a certification (the American Trial Lawyer Ultimate Trial Lawyer Certification) where no such certification exists.

(f) The Respondent violated Rule 8.4(b) and 8.4(c) (Misconduct) by representing in his FOIA

request that he was the managing attorney for SSA, when the evidence shows that he clearly was not.

VSB Docket No. 04-052-1044

(a) The Respondent violated Rule 1.7(b) 1-2 (Conflict of interest) in his attempt to represent his son in the District Court for the District of Columbia and his continued actions to do so even in the face of a court ruling that there was a conflict.

(b) The Respondent violated Rule 3.1 (Meritorious Claims and Contentions) by his litigation in the District Court for the District of Columbia and his actions in the Circuit Court of Fairfax County, Virginia. The complaint filed by the Respondent with all the parties he named as defendants standing alone shows that the Respondent has violated this Rule. The numerous pleadings filed thereafter further demonstrate that the Respondent's aim was to punish anyone who had any connection with the litigation filed by his former wife to regain custody of their son. Any attorney who had in any way appeared in that litigation ended up being named as a defendant. NCMEC and several of its staff were named as defendants resulting in a legal cost to NCMEC alone of $160,090.00 Attorney Patrick Stiehm who had taken Respondent's ex-wife's case pro bono was named as a defendant thereby making good on Respondent's claim that Stiehm's representation would cost him a "big chunk of change."

Furthermore, in litigation in Fairfax County, Respondent subpoenaed two members of NCMEC as witnesses for a hearing involving his efforts to file

a Statement of the Case for an appeal, when these two staff members had nothing to do with the Fairfax litigation. While the subpoenas were quashed they nevertheless had the effect of harassing the NCMEC staff members. Remarkably this is the only instance in which the Respondent was sanctioned by a court.

Perhaps if he had been sanctioned earlier, either by the United States District Court for the Eastern District of Virginia or the District Court for the District of Columbia, such action would have put a stop to Respondent's unwarranted and vexatious conduct. Unfortunately neither of the courts saw fit to impose sanctions.

(c) The Respondent violated Rule 3.4(d)(h(i)(j) (Fairness to Opposing Party and Counsel) by the following conduct: (1) by continuing to attempt to represent his son in the District of Columbia litigation in the face of a court ruling, in violation of Rule 3.4(d); (2) by threatening the NCMEC attorney with a bar complaint and filing a criminal complaint with the FBI, in violation of 3.4(h); (3) by filing a motion for sanctions against Patrick Stiehm and naming Stiehm as a defendant in the District of Columbia litigation and by his entire course of conduct in the District of Columbia litigation, in violation of Rule 3.4(i)(j);

(d) The Respondent violated Rule 3.7(a) 1-3 (Lawyer as Witness) by acting as an advocate when he was a necessary witness in the Eastern District of Virginia litigation.

(e) The Respondent violated Rule 4.4 (Respect for the Rights of Third Persons) by the whole course of litigation in the District Court for the District of

Columbia. In addition, his subpoena of Ms. Brinkerhoff and Mr. Dennis to the Fairfax Circuit Court for a hearing on the Statement of Facts to be submitted for appeal further demonstrates a violation of this Rule.

(f) The Respondent violated Rule 8.4(b) and 8.4(c) (Misconduct) in asserting a RICO claim and by his letter to the FBI.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and the Respondent, including the Respondent's prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by the Respondent.

After due deliberation the Board reconvened to announce the sanction imposed. The Chair announced the sanction as REVOCATION.

The Board in reaching its decision of revocation recognized that the violation of certain of the Rules such as Rule 1.5(a), 7.1, and 8.4(b) & (c) standing alone may not merit the ultimate sanction of revocation. However, the Respondent's conduct by pursuing litigation in Virginia in Docket No. 04-052-0794 and in the District of Columbia in Docket No. 04-052-1044 is conduct that cannot be tolerated. While a court through sanctions can protect itself from such conduct by a deceitful and unprincipled attorney, the public must look to the VSB for protection. The other violations demonstrate Respondent's complete disregard for the Rules of Professional Conduct.

Furthermore the Respondent was defiant to any criticism of his conduct in pursuing what can only be described as meritless and vexatious

litigation. This same defiance was evident to the Board as the Respondent sought to justify his conduct. Therefore the Board concluded that the sanction of revocation was the only remedy by which the public and bar could be adequately protected.

Accordingly, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is revoked, effective October 27, 2006.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client The Respondent shall give such notice within 14 days of the effective date of the revocation, and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of October 27,2006, he shall submit an affidavit to that effect to the Clerk of the

Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13,B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent at his address of record with the Virginia State Bar, being 7924 Peyton Forest Trail, Annandale, VA 22003-1560, by certified mail, return receipt requested, and by regular mail to Noel 0. Sengel, Bar Counsel, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria, Virginia, 22314-3133.

ENTERED this 28th day of November, 2006

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: /S/
James Leroy Banks., Jr. 1st Vice Chair